TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, [redacted].

No. [redacted]30

THE UNITED STATES, PETITIONER,

vs.

BERNARD CITRON.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

[redacted]

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1910.

No. 189.

THE UNITED STATES, PETITIONER,

vs.

BERNARD CITROEN.

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a United States Circuit Court of Appeals for the Second Circuit.

BERNARD CITROEN, APPELLANT,
vs.
THE UNITED STATES, APPELLEE.

(4974)

Transcript of record. Appeal from the Circuit Court of the United States for the Southern District of New York.

[Printed under the direction of the clerk.]

1 *Petition.*

United States Circuit Court for the Southern District of New York.

In the matter of the application of the collector of customs at New York, for a review of the decision of the Board of General Appraisers, as to the classification of certain merchandise and the rate and amount of duty imposed thereon, imported by Bernard Citroen, per S. S. "La Touraine," June 11, 1906, entry No. 142806. Protest Numbers 251326/20994.

To the honorable the Circuit Court of the United States for the Southern District of New York:

Your petitioner, the collector of customs for the collection district and port of New York, being dissatisfied with the decision made on the 14 day of June, 1907, by the Board of General Appraisers designated by the Secretary of the Treasury for and on duty at said port, pursuant to the act of Congress approved June 10, 1890, en-
2 titled "An act to simplify the laws in relation to the collection of the revenues," reviewing and reversing the decision of your petitioner as to the rate and amount of duty chargeable on certain merchandise, namely, thirty-seven drilled pearls, imported per "La Touraine" and entered on or about June 11, 1906, by Bernard Citroen, respectfully makes application to this court for a review of the questions of law and fact involved in such decision, and sets forth, as hereinafter appears, a statement of the errors of law and fact complained of.

The said merchandise was classified and assessed for duty by your petitioner, the said collector of customs, at the rate of 60 per cent. ad valorem under the provisions of paragraph 434 of the act of Congress approved July 24, 1897, entitled "An act to provide revenue for the Government and to encourage the industries of the United States," and the entry thereof was liquidated accordingly.

The said owner and importer being dissatisfied with the decision assessing duty as aforesaid, gave notice within ten days after said liquidation and ascertainment of duty, setting forth the reasons of

his objections thereto, claiming the said merchandise to be dutiable at 10 per cent. ad valorem by similitude under paragraph 436 of said act.

Whereupon the invoices and all papers and exhibits connected therewith were duly transmitted to the said Board of General Appraisers, which board, proceeding to hear and determine the questions of law and fact involved, reversed the decision of your petitioner in the premises. The record of the decision as aforesaid, bearing date the 14th of June, 1907, was transmitted to your petitioner, which is here referred to and made part hereof.

3 And for the errors of law and fact in the decision of said board complained of, your petitioner states—

1. That the said board was in error in holding the said pearls to be dutiable at 10 per cent, advalorem, under the provisions of paragraph 436 of said act.

2. In not holding them to be dutiable, as assessed, at 60 per cent. advalorem, either directly or by similitude, under paragraph 434 of said act.

3. In finding them to be by similitude pearls in their natural state, not strung or set.

4. In not finding the same to be articles commonly known as jewelry.

5. In not finding the same to be articles commonly known as jewelry, and parts thereof, finished or unfinished.

6. In not finding as a fact that the pearls were of unusual size and difficult of matching as to color.

7. In not finding as a fact that before importation the said 37 pearls had been carefully selected, graded as to size, and matched as to color, especially for a necklace.

8. In not finding as a fact that the said aggregation of 37 pearls was of greater value than the total of the separate values thereof.

9. In not finding as a fact before importation the said 37 pearls had been actually strung and offered for sale in the form of a necklace.

4 10. In not finding as a fact that after importation it was unnecessary to re-bore or re-polish any of said 37 pearls before making them into a necklace.

11. In not finding as a fact that after importation the said 37 pearls were sold to one Leeds, in the actual condition imported, as and for a necklace.

12. In not holding that drilled pearls once having been made into jewelry are when unstrung more similar to jewelry than pearls in their natural state, as enunciated in the case of Tiffany v. U. S. (112 Fed, Rep. 672.)

13. In sustaining the protest of the importer and in reversing the decision of your petitioner, as collector of customs, in the premises.

Accordingly, your petitioner respectfully prays this court to order the said Board of General Appraisers to return to the court the record and evidence taken by the said board, together with a certified state-

ment of the facts involved in the case, and the decision thereon, and thereupon such further evidence as may be taken pursuant to the statute in such case made and provided to proceed to review said decision and to hear and determine the questions of law and fact involved in the same.

J. J. COUCH,
Collector of Customs

5 *Order.*

At a stated term of the United States Circuit Court for the Southern District of New York, held in the United States court and post-office building in the city of New York, on the 10th day of July, A. D. 1907.

Present, Hon. E. Henry Lacombe, circuit judge.

In the matter of the application of the collector of customs at New York for a review of the decision of the Board of United States General Apprisers as to the classification of certain merchandise and the rate and amount of duty imposed thereon, imported by Bernard Citroen, per S. S. "La Touraine," June 11, 1906, entry No. 142806. Portest numbers 251326/20994.

Upon reading and filing the petition herein and upon motion of Henry L. Stimson, United States attorney and attorney for the petitioner, it is

Ordered, that the Board of United States General Appraisers, sitting at the port of New York, return to this court the record and evidence taken by said board in the case, together with a certified statement of the facts involved and the decision thereon.

E. H. LACOMBE,
Circuit Judge.

(Endorsed:) U. S. Circuit Court. Southern District New York. Filed Jul. 10, 1907. John A. Shields, clerk.

6 *Return.*

United States Circuit Court, Southern District of New York.

UNITED STATES
v.
BERNARD CITRONE. } Suit 4974.

On application for review of a decision of the Board of United States General Appraisers.

NEW YORK.

In response to the order of the court, said board hereby returns, as given below, the record in the above-entitled matter, and certifies

that a complete statement of the facts involved in the case, together with the decision of the board, is embraced therein, and that no other facts were ascertained by said board than such as are thus shown.

Specifically the return comprises:

1. The importer's protest, with the report of the collector of customs thereon.

2. Copy of a letter from the Treasury Department, referred to in said report.

3. Transcript of the testimony taken before the board.

4. The Exhibits A, B, and C referred to in said testimony, which are inclosed in an envelope herewith.

5. Copy of decision of the board, known as G. A. 6617 (T. D. 28246).

WILBUR F. LUNT,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

7 *Protest.*

BERNARD CITROEN, 66 BEAVER STREET,
New York, June 28, 1906.

Hon. N. N. STRANAHAN,
Collector of Customs.

SIR: I hereby protest against the assessment, liquidation, and payment of duty at the rate of 60% ad valorem on certain pearls imported by me on the 11th of June, 1906, ex S/S "La Touraine" from Havre, entered for consumption under entry No. 142806, liquidated on June 19th, 1906.

Claiming that the drilled pearls by similitude are liable to a duty of 10% ad valorem only under par. 436, tariff act of July 24th, 1897, following the decision rendered in T. D. 25986–G. A. 5899 and T. D. 25876, also T. D. 26313, I claim that the assessment at 60% ad valorem under par. 434 is not in harmony with the decision of the court, and is therefore illegal.

The duty exacted under compulsion being illegal, protest is hereby made against the payment of the same.

Yours, respectfully, BERNARD CITROEN.

(Endorsed:) Custom-house. New York. June 29, 1906. Received.

8 *Report of collector.*

UNITED STATES CUSTOMS SERVICE,
Port of New York, April 10, 1907.

BOARD OF U. S. GENERAL APPRAISERS,
Port of New York.

GENTLEMEN: I transmit herewith protest No. 20994 of 1906, series of Bernard Citroen, against the assessment of duty as made by this office on an importation of pearls made by him in the S. S. "La Touraine" June 11, 1906, entry No. 142806.

I have to state that the appraiser returned the merchandise as "pearls" with the advisory rate of 10% ad valorem. This office, however, in view of department's letter of June 18, 1906 (38319, J. L. G., 57869), classified the merchandise by similitude as pearls, set or strung, or jewelry, dutiable at 60% ad valorem under the provisions of par. 434 of the act of July 24, 1897, and it is from this classification and consequent assessment of duty that the protest is lodged.

I transmit herewith, for the information of the Board of Appraisers, a copy of department's letter of June 18, 1906 (38319, J. L. G.), supra.

I would state for the information of your board that the suit that was instituted for the recovery of the liquidated duties was discontinued by authority of the Attorney-General for the reason that the importer paid the liquidated duties on April 6, 1907.

Respectfully, yours,

J. J. COUCH,
Special Deputy Collector.

(Enclosures:) Entry, invoice, protest, and copy of D. L.

9 *Copy of letter from Treasury Department.*

57869.

TREASURY DEPARTMENT,

Office of the Secretary,

DIVISION OF CUSTOMS,
Washington, June 18, 1906.

The COLLECTOR OF CUSTOMS,
New York, N. Y.

SIR: Replying to your letter of the 15th instant, regarding certain pearls imported per S. S. "La Touraine," June 10, 1906, entered by Mr. Bernard Citroen as pearls in their natural state, valued at 1,143,366 francs, which were classified, and passed by you as entered, on the payment of duties amounting to 10 per centum ad valorem, under paragraph 436 of the act of July 24, 1897, I have to inform you that as it appears from evidence submitted to you subsequent to the delivery of the pearls to the importer that such pearls had, as a matter of fact, been strung abroad prior to their exportation to the United States, it is the opinion of the department that the importation in question is dutiable at the rate of 60 per centum ad valorem, under the enumeration for pearls set or strung, either directly or by similitude, under paragraph 434 of the act of July 24, 1897, and § 7 of the same act. You are therefore directed to reclassify the importation accordingly and to call upon the importer for the in-

10 creased duties found due under such reclassification, basing your action under the authority conferred by § 21 of the act

of June 22, 1874. Should the importer refuse to pay the increased duties, you will report the matter to the United States attorney with the request that suit be instituted for the recovery of the amount due.

Respectfully,

JAMES B. REYNOLDS,
Assistant Secretary.

11 *Testimony.*

Jewelry. The U. S. General Appraisers. In the matter of Bernard Citroen. Before Board No. 1. Protest No. 251326.

Present: General Appraiser Sharretts.

NEW YORK, *April 22, 1907.*

Appearances: Curie, Smith & Maxwell (by W. Wickham Smith, esq.), counsel for the importer. John A. Kemp, esq., Solicitor of Customs.

Mr. SMITH. This is protest 251326 of Bernard Citroen, entered by "La Touraine," June 11, 1906, No. 142806.

It appears that neither the Government counsel, Mr. Kemp, nor any of his staff, had been notified that this case was to be taken up at this time and is not prepared to go on with the trial. But at the request of counsel for the importer he has consented that the testimony of one witness, Mr. Meyer Goodfriend, who has to go out of town for a period of some weeks, shall be taken on the direct this morning, Mr. Kemp reserving the right to cross-examine the witness and to enter and have ruled upon such objections as he may desire to make to the questions to be propounded by counsel for the importer to the witness.

12 Gen. Appr. SHARRETTS. I presume that in entering his objection the matter will be expunged from the record entirely if the objection is sustained, is that the understanding?

Mr. SMITH. Yes.

MEYER GOODFRIEND, a witness called in behalf of the importer, having been duly sworn, testified as follows:

By Mr. SMITH:

Q. Mr. Goodfriend, what is your occupation?
A. Importers of precious stones and imitation stones.
Q. How long have you been in that business?
A. As salesman and importer, over 20 years.
Q. How many years have you been dealing largely in pearls?
A. Over 10 years.
Q. Do you know the importer in this case, Mr. Bernard Citroen?
A. I do.
Q. How long have you known him?
A. 10 or 15 years.

Q. Have you been at the establishment of Hugo Citroen, Mr. Bernard Citroen's brother, in Paris, within the last few years?

A. I have.

Q. Were you in Mr. Citroen's establishment in the year 1905?

A. I was.

13 Q. Did you see there and have shown to you a number of pearls?

A. I did.

Q. You say you did see some pearls there?

A. Yes, sir.

Q. Remember about how many?

A. In the neighborhood of 35 or 40.

Q. Did you examine them?

A. I did.

Q. Did you have any discussion or dickering with Mr. Citroen, either of the Messrs. Citroen, as to the purchase of all or any of these pearls?

A. No, sir.

Q. Were any of them offered to you for sale?

A. No, sir.

Q. Have you been buying and handling pearls for the last 10 years?

A. I have.

Q. Have you bought collections of pearls?

A. I have.

Q. Are you familiar with the values of pearls?

A. I am.

Q. And with the mode of determining the value?

A. I am.

Q. Were these pearls drilled or undrilled?

A. Drilled.

Q. Were they more valuable by reason of the fact that they were drilled or less valuable?

A. I think less valuable.

Q. Please state, Mr. Goodfriend, when you see a number of pearls, how you determine their value for commercial purposes.

A. The first thing is to assort the pearls acording to what we consider the best quality and graduate them down to the poorest

14 quality. Then we take a mental determination of what we know to be the market value, and get our calculation by starting at the highest value of the pearl and determining each one; or, if there may be some of apparently the same quality, we determine them in little groups. That is to say, we determine their value singly or in little groups.

Q. That is, you determine the value either of each pearl singly, or the value of little groups of pearls, which, so far as you can judge by inspection, are the same quality and value—is that right?

A. Same quality; of course, the size would make it different.

Q. Well, as to your little groups that you speak of, this would be same size or different?

A. Same size, apparently same quality.

Q. Now, when you have arrived at the value of the pearls in the manner that you have described, please state whether the fact that there was a collection of them, such as 35 or 40, as you say, would add anything to their value.

A. I don't think so.

Q. In other words, would the value of the collection of pearls be any greater than the aggregate of values of individual pearls computed as you have stated?

A. No, sir.

Q. If you had been considering the purchase of any of this particular lot of pearls that Mr. Citroen showed you, would you have determined their value in the way you have described?

A. I certainly would.

Q. Would you have given any more for them—

A. I would not.

15 Q. Than the value that you arrived at in the manner that you have described, by reason of the fact that there were 35 or 40 of them that might be used, if anybody felt so disposed, as one collection?

A. I don't think I would.

Q. As an expert, I ask you whether if Citroen had disposed of these pearls two or three at a time, one at a time, as purchasers might come along and want them, whether in your judgment the aggregate price that he might thus obtain would be less or more than the price obtained by selling the whole lot at once?

A. My experience has shown me that in selling them that way we arrive at a greater aggregate amount than we would if we sell as a collection.

Q. Mr. Goodfriend, referring to this lot of pearls which Citroen showed you, will you state whether the pearls were all the same quality, or different qualities?

A. They were various qualities.

Q. And does that answer of yours apply to pearls of the same size, that is to say, were they pearls of the same size but of different qualities?

A. What lots do you refer to?

Q. You say these pearls were various qualities?

A. Yes.

Q. Now, I ask you whether they were pearls that were substantially the same size and that were various qualities?

A. No; different sizes.

Q. You don't understand my question. They were of different sizes, I assume, of course; were they pearls that were substantially alike in size, or were they all different sizes?

A. That question isn't so clear to me; I don't quite comprehend what you mean.

16 Q. When you say that these pearls were all various qualities, do you mean that answer to be taken utterly irrespective of the question of size?

A. Yes, sir.

Q. The pearls were of various sizes, were they?

A. Yes, sir.

Q. And they were also of various qualities?

A. Yes, sir.

Q. You have been familiar with drilled pearls for a long time, have you?

A. Yes, sir.

Q. Will you please state whether drilled pearls are commercially suitable for one use or for various uses?

A. For various uses.

Q. Will you be good enough to state what those are?

A. Drilled pearls are used for necklaces, for festoons, for lorgnette chains; sometimes you find drilled pearls for scarf pins, and I think occasionally on the top of tiaras you will find drilled pearls.

Q. Sometimes drilled through so as to be held in place?

A. Yes.

Q. Now you have spoken of festoons; will you please explain more particularly what a festoon is?

A. A festoon is a necklace made principally of chain where the intersecting points are connected with a little pearl or large pearl which is drilled.

Q. That is to say, you mean a necklace consisting of a chain of gold, or platinum, where the links are separated from each other by pearls?

A. At various distances, and then spread. A festoon refers to the pattern of the necklace, the intersecting triangles or squares.
17 It hangs down like a piece of lace; at the joining points there are pearls put there which are drilled.

Q. Let me ask you, Mr. Goodfriend, an article [handing same to witness], and ask you if you have seen an article like that in business, commercially?

A. I have.

Q. Is there anything unusual about that article?

A. Not unusual, no.

Q. Well, what is it commercially?

A. This is a brooch composed of diamonds and pearls.

Q. The stones comprising the three rows—four rows—at the bottom, and the loops here are diamonds, are they?

A. Yes, sir.

Q. And the stones at the top, or rather the jewels at the top, are pearls, are they?

A. Yes; between there is a little row of five single diamonds, then there is a row of five pierced pearls or drilled pearls of pear-shaped forms; and above that are five little pearls on top of it.

Q. Now referring to these five large pearls, are they drilled pearls?

A. Yes, sir.

Q. Now I show you another article [handing same to witness]; what is that?

A. It is a chain bracelet.
Q. The metallic part of the bracelet is what?
A. Looks like gold.
Q. And there are three large stones set in there, are there?
A. Yes, sir.
Q. What are they, so far as you know and can judge?
A. The center one is a white—kind of yellowish—sapphire.
18 Q. The right-hand one?
A. This is a jargon.
Q. The left-hand stone?
A. Well, from my eye, it may be a garnet, or it may be a tourmaline.
Q. Now, referring to these little white circular jewels between the stone and the clasp separating the links of the chain, what are they?
A. They are drilled pearls.
Q. Drilled pearls, are they?
A. Yes, sir.
Q. Is there anything unusual about that article?
A. No, sir.
Q. That is an ordinary commercial bracelet, is it?
A. Yes, sir.
Q. Referring to the pearls in both the brooch and the bracelet, which you have said were drilled, are they drilled through or not?
A. Drilled through.
Q. You have testified already, Mr. Goodfriend, that this particular lot of pearls that Citroen showed you, you think would have been more valuable if they had not been drilled?
A. Yes, sir.
Q. Does that answer apply generally to pearls?
A. Yes, sir.
Q. That is to say, taking any lot of pearls and drilling them, would their value after drilling be greater or less than it was before?
A. Less.
Mr. SMITH. That is all, Mr. Kemp.
Mr. KEMP. I think I may be entirely safe in notifying you that the Government will want to cross-examine.
19 General Appraiser SHARRETTS. You may elect, as I understand it, Mr. Smith, to throw out the testimony entirely if you see fit to do it, this testimony, because this witness won't be back for six weeks.
Mr. SMITH. I assume Mr. Kemp understands that, and is like a deposition put in in esse. If it is so, it is subject to cross-examination. Either you have that right or it goes out of the case. We can't tell now what Mr. Kemp will want to do, because there are going to be other witnesses here next week that you will cross-examine who will testify to substantially the same thing.
Now the case is adjourned, as I understand it, Mr. Kemp, until a week from to-day at 10.30 a. m.

Mr. KEMP. I think, perhaps, I ought to say to you that the Government will not be ready at that time.

Mr. SMITH. I understand that, and won't expect the Government to go on.

Case continued to April 29th, 10.30 a. m.

20 Jewelry. The U. S. General Appraisers. In the matter of Bernard Citroen. Before Board No. 1. Protest 251326.

Present: Lunt, Sharretts, & McClelland, General Appraisers.

NEW YORK, *April 30, 1907.*

Hearing continued from April 22, 1907.

Appearances as before.

BERNARD CITROEN, the importer, having been duly sworn, testified as follows:

By Mr. SMITH:

Q. What is your business, Mr. Citroen?

A. Wholesale dealer in pearls and precious stones in Paris.

Q. Where is your place of business in Paris?

A. 16 Rue Druot.

Q. Under what name is that business carried on?

A. Hugo Citroen.

Q. Mr. Citroen, you say this business is carried on in the name of Hugo Citroen?

A. Yes, sir.

Q. What relation is he to you?

A. He is my brother.

Q. Are you associated with him in business?

A. No.

Q. Now, what connection have you with this business of Hugo Citroen?

21 A. We are doing business sometimes together, sometimes each for ourself. We have got no regular partnership.

Q. Now, I call your attention to an invoice dated the 31st of May, 1906, and ask you if you remember that importation?

A. (Witness looks at invoice.) Yes, sir.

Q. Did you import the pearls described on that invoice?

A. Yes, sir.

Q. Did you see them after their importation?

A. Yes, sir.

Q. Will you please describe their condition as they were imported?

A. They were 5 different pearl papers that we have got in our business. In one paper was one pearl, in the other paper were six pearls, in another paper was eight pearls, in another one ten, and in the last paper twelve. All those pearls were loose.

Q. Were all these papers together in a box?

A. All those papers were in one box; yes.
Q. Small box?
A. Small box.
Q. Such as is usual in the importation of precious stones?
A. Yes, sir.
Q. Did you pass that box through the customs?
A. Yes, sir.
Q. And after you had obtained its release from the customs what did you do with it?
A. I put it in a safe deposit.
Q. Well, what did you do with it after you took it out of the safe deposit?
A. After?
Q. Yes.
22 A. I delivered them.
Q. Where and when and to whom?
A. I delivered them.
Q. You are trying to fix the date now?
A. Yes.
Q. Approximately; I don't care for the exact date.
A. In July.
Q. Where?
A. In Newport.
Q. To whom?
A. To Mr. Leeds.
Q. Mr. William B. Leeds?
A. William B. Leeds.
Q. Did you deliver them in the precise condition as they were imported?
A. In this condition; yes.
Q. In the papers?
A. Yes.
Q. Was there any string in the box?
A. No string.
Q. Was there any clasp.
A. No clasp.
Q. Did you ever at any time after their importation have anything to do with stringing them?
A. Nothing; I had nothing to do.
Q. Now, how long have you or Hugo Citroen had those pearls?
A. A few years.
Q. Several years?
A. Several years.
Q. During that time had you exhibited them and offered them for sale?
A. Very often.
Q. To various persons?
23 A. To various persons.
Q. Had you shown them to various persons?

A. I have shown them to various persons.
Q. Did you hear the testimony the other day of Mr. Goodfriend?
A. Yes, sir.
Q. Who described having seen such pearls in Paris?
A. Yes, sir.
Q. Well, now, were those pearls that he saw these pearls?
A. They were with the pearls he saw.
Q. That is to say, these pearls that were imported together with other pearls were shown to him. Is that so?
A. Yes; that's it.
Q. Now, do you know Mr. Michael Dreicer?
A. I know him.
Q. He is a jeweler up here on 5th ave., is he?
A. Yes, sir.
Q. Did he see these pearls?
A. He saw those pearls.
Q. Did he bargain or negotiate for the purchase of some of them?
A. Oh, some; yes.
Q. Did you know Mr. Ludwig Nissen?
A. Yes, sir.
Q. Did he see these pearls?
A. He saw those pearls.
Q. Was there any discussion with him about the purchase of any of them?
A. We spoke, but we were really not in a real deal.
Q. You didn't get so far as to bargain?
A. Yes.
24 Q. But you did discuss with him the question?
A. We discussed the question.
Q. Do you know Alfred H. Smith?
A. I know him.
Q. He is a jeweler on 5th avenue, is he?
A. Yes, sir.
Q. And also down town?
A. Down town, too.
Q. Did he see those pearls?
A. He saw those pearls.
Q. Was there any discussion with him about the purchase of them or any of them?
A. A small discussion; yes.
Q. Now, during the years that you had these pearls, did you make effort to sell them?
A. Yes, sir.
Q. And did you receive bids or offers about the buying of them?
A. I did.
Q. Were those negotiations all with reference to the whole lot of pearls, or with reference to the whole or some part?
A. Sometimes to the whole, sometimes to some part.
Q. Were these pearls drilled or undrilled?

A. They were drilled.

By Gen. Appr. LUNT:

Q. Did you have any of them drilled?

A. No.

Q. They were drilled when you acquired them?

A. Yes, sir.

By Mr. SMITH:

25 Q. While they were over there, these pearls that are on this invoice, were they always in a lot by themselves, or were they separated into different lots?

A. They were sometimes in a lot, they were sometimes separate.

Q. Were they sometimes assembled with other pearls?

A. Yes, sir.

Q. When they were separated, according to what were they separated, according to quality?

A. Sometimes according to quality, sometimes according to size.

Q. Now, Mr. Citroen, you say these pearls were drilled?

A. They were drilled.

Q. How long have you been dealing in pearls?

A. Twelve years, about—over ten years.

Q. On a large scale?

A. On a very large scale.

Q. Both drilled and undrilled?

A. Drilled and undrilled.

Q. What effect does the drilling of a pearl have on its value?

A. It makes the value be less.

Q. Why is that?

A. As a pearl which is drilled can only be used really for its whole value, for a necklace. It can be used for other purposes, but it is less value in that case.

Q. You mean that the number of purposes to which it may be devoted is limited by drilling?

A. It is not limited. The value is limited that it can be used.

Q. Well, now, how do you arrive at the value of such pearls as these?

26 A. The only way to arrive at the value is to take these pearls, and having the weight, determine the value of the pearl, and when you have determined the value of each pearl you add the whole amount together and you come to the value of the lot.

Q. Let me ask you whether the value of such a lot of pearls as those which you imported is any greater by reason of its being a collection than the aggregate of the separate values of the individual pearls?

A. It is not greater.

Q. It is not greater?

A. Not greater.

Q. It is less?

A. It is rather less.

Q. A little less, you mean?

A. Yes.

Q. Will you state why the value as a collection is a little less than the total value of the individual pearls?

A. For the reason that in our business when we make a very important deal we are always satisfied with a smaller percentage of profit than when we sell only two or three pearls; and when we have got lot like that we know the cost price of the lot, we sell all together with a small profit; when if we sell by twos and threes pearls we always charge a little more just to be able to sell the remainder of the pearls at a cheaper price to be sure not to make any mistake.

Q. Suppose you had had a lot of pearls exactly like this lot which were not pierced or drilled, would you consider such a lot worth less or more than the lot which you had?

27 I would consider the lot being worth more. I speak of the pearls which are undrilled.

Q. Now, one of the principal uses of drilled pearls is to make necklaces, is it?

A. Yes, sir.

Q. Is that the only use?

A. No, sir.

Q. Will you mention some of the other uses to which the drilled pearls are applied?

A. They may be used for all the purposes exactly like the pearl which is up here, for brooch, scarf pins, for rings, earrings.

Q. I show you a bracelet containing some pearls separated in the links; those are pearls, are they, those small jewels [indicating on a sample handed to witness]?

A. Yes, sir.

Q. Are those pearls drilled or undrilled?

A. They are drilled, drilled through.

Q. Is such use of them as they are used in the bracelet a common or uncommon use?

A. Very common.

Q. Anything extraordinary about that bracelet?

A. No, sir.

Q. Articles of jewelry with pearls in such a position in them as that are common articles of jewelry, are they?

A. Yes, sir.

Mr. SMITH. I offer this as an illustrative exhibit, with the understanding, of course, as I explained the other day, that it will be shown to the board when they want to see it, and then we will substitute a photograph of it. Of course we don't want to have valuable articles of jewelry like this going around from court to court.

28 By Gen. Appr. MCCLELLAND:

Q. Is it the practice to drill such pearls as we find in this illustrative exhibit, before the bracelet is being made up, or only when you are going to make up a bracelet like this?

A. Sometimes the pearls are drilled before and sometimes they drill it only for the moment they put it in the bracelet.

Q. What would be the purpose of drilling such pearls as these before your are willing to make up an article of jewelry?

A. They are drilled; they are drilled when they come from India, even.

Q. Did I understand you to say that drilling lessens the value of them?

A. Yes.

Q. Can you explain why pearls should be thus drilled and their value lessened before they are about to be made up into articles of jewelry?

A. The pearls are used, for instance, in India, and since a long time the Hadji over there, the very rich people use them, not only the ladies use them, as over here, but the men wear pearls themselves, sometimes 12, 15, 20 rows of pearls they put on their hats, on their horses. They use them in several ways. So the pearls are drilled at that time to be able to be worn, and after those people have sold those pearls they send the pearls over to Europe, Paris, or London, and as the pearls were drilled at that time, they were obliged to sell them as they were. Now, in the second way, it is much more easier for the purpose of business to have the pearls drilled through and to put them on the string, and they are generally drilled pearls.

29 But the question is absolutely certain that pearls that are drilled may only be used for purposes like that, for instance, on bracelets, on chains or necklaces, but it is less value when it is used in another way.

By Mr. SMITH:

Q. Now go on and testify about that brooch that you have there [handing same to witness]?

A. Now, there is a brooch, for instance; those pearls are drilled pearls. They have probably been in some necklace before; probably at the end of a necklace. They have been taken out or bought like that, they have been mounted in this crown—this brooch—and they look certainly all right. Now, according to the real market value, the same brooch with pearls that are undrilled at the end—they could not have those small diamonds on it, of course—but those pearls would be worth at least twice as much as these pearls are.

Gen. Appr. MCCLELLAND. That is to say, undrilled they would be worth twice as much as they are?

The WITNESS. Yes, undrilled.

By Mr. SMITH:

Q. Now, I show you a chain containing some pearls and other jewels, are those drilled pearls [handing same to witness]?

A. They are.

Q. Is this chain a common article of jewelry?

A. It is a common article of jewelry.

Q. Anything unusual about it?
A. Nothing.
Q. It is usual, is it, to use drilled pearls in such a case as this?
30 A. Very usual.
Q. Now, these pearls that you imported and delivered to Leeds, were they the same size or different sizes?
A. Different sizes.
Q. Were they all the same quality, or different qualities?
A. Different qualities.

Cross-examination by Mr. KEMP:

Q. I don't quite understand the relation between you and your brother, so far as it relates to this necklace. Will you state what that was?
A. In this business?
Q. Yes.
Mr. SMITH. In this particular transaction.
A. Yes; my brother wanted to stay in Paris, and it was not very easy for him to come here, so he asked me to come here and to make this transaction for him.
Q. Well, did you have any interest in this necklace to begin with, any money interest?
A. Not in the beginning, no.
Mr. SMITH. One moment, I object to the question being predicated on the designation that this article is a necklace. There is nothing here in this case to show anything about a necklace.
Mr. KEMP. I don't suppose that my question will classify this at all.
Mr. SMITH. Well, I don't know that it would. I think,
31 perhaps, your answer is justified. I don't quite like to have them described as necklace.
Mr. KEMP. I will endeavor to avoid that. I have no disposition to try and classify them myself.
Gen. Appr. SHARRETTS. Do you withdraw that question in that shape, Mr. Kemp?
Mr. SMITH. Oh, leave it as it is.
Mr. KEMP. I will try to call these articles, this merchandise, pearls, hereafter.
Q. Did you have any interest, any money interest, in these pearls at any time?
A. No, sir.
Q. Did your brother have the sole money interest in them?
A. No, sir.
Q. Who did have other interest in them?
Mr. SMITH. I object to that as totally irrelevant.
Mr. KEMP. Well, I think it is on cross-examination here, and it may be that I can show that it is material. I think the whole transaction ought to come out here from start to finish. That is my idea,

and that is what I am trying to get at. I think I am entitled to g far enough back to identify these goods if I can.

Mr. SMITH. My proposition is, Mr. Kemp, we are dealing with a article imported; who owned it can not influence its classification It is not either classified or placed under any provision which relate to a society or religious body, or museum or anybody else tha
32 was to receive it, or had bought it, and it seems to me that al these questions as to who may be the various persons that ha any financial interest in this transaction is entirely outside the case

Mr. SHARRETTS. The board overrules the objection.

A. Now, I tell you: In our business—I speak of the general busi ness—we always act in a very confidential way; I mean we are con fident one in each other. Now, there has never been any papers, an agreements, anything signed according to these pearls and to othe pearls. My brother was the owner of those pearls. He has neve signed any papers to show that anybody else had interest no more i those pearls than in some other pearls that we had, which were mixe with those pearls at certain times shown to some parties. He wa absolutely able to offer those pearls in any quantity; to sell them b one, by two, by three, by all together, a bigger amount of pearls tha was sold.

Gen. Appr. SHARRETTS. He has asked you who was.

The WITNESS. Some people in Paris; yes, sir.

Mr. SMITH. Name them.

The WITNESS. How many firms?

Mr. KEMP. No, persons or individuals, how many firms?

A. There was a few firms, and in each firm a few partners.
33 Mr. SMITH. Well, name them.

The WITNESS. There was four firms interested.

Gen. Appr. SHARRETTS. Do you know their names?

The WITNESS. I know the names, yes.

Gen. Appr. SHARRETTS. Well, give their names.

The WITNESS. One is—it is a private man—I don't know really if I have got the right to give the name. I can give you one name. It is a wholesale pearl dealer in Paris; he is called Mr. Leo Sachs.

By Mr. KEMP:

Q. Who is the other?

A. Another one was a private man, with nothing in the business. Now, I don't know if I have to mention the names.

Mr. SMITH. I think this is an unreasonable prying into the private business of these people.

Mr. KEMP. I don't think so.

Q. You say, then, that your brother was not the sole owner of these pearls?

A. I say that.

Q. What ownership did he have, and how much?

A. 27 per cent.

Q. And the balance was owned, of course, by other parties?

A. Other parties.

Q. How long had your brother been interested in these pearls?

34 A. Three years, about.

Q. About three years?

A. Yes; I don't remember exactly.

Q. Of whom did your brother get them?

Mr. SMITH. I object to that. It is absolutely irrelevant where a man who ships goods to this country got them, as bearing on the classification.

Gen. Appr. SHARRETTS. If you will stipulate that this was a necklace or an article of jewelry, I have no doubt that the attorney for the Government will not press the question.

Mr. SMITH. How could the question of whom it was bought decide whether it was a necklace? Would it be a necklace if it was bought from A and not a necklace if it was bought from B?

Gen. Appr. SHARRETTS. This private individual he is speaking about is possibly and probably the person who originally sold the necklace. He took the necklace to this dealer, Leo Sachs, and gave him an interest or sold him an interest in it, and in turn he turned it over to Mr. Citroen. That is probably the fact; I don't know, I am simply surmising or guessing. The question that the Government asks is who this party was.

Objection overruled.

A. We bought the pearls from a man; I don't know if the pearls were his, but he made the transaction—a man called A. Eknayan. I believe that these are the pearls.

Q. How many of them were there?

35 A. More than that.

Q. Well, how many?

A. Forty-three.

Q. Well, what was the number you delivered to Leeds?

A. Thirty-seven.

Q. So that when your brother bought them there were 43 pearls together, were there?

A. When he bought pearls there was 43 pearls.

Q. Together?

A. He bought 43 pearls at one moment; yes, sir.

Q. And of those 43 pearls 37 were afterwards sold ultimately to Mr. Leeds?

A. I believe that these 37 pearls came out of those 43.

Q. Did you see those 43 pearls when your brother first got them?

A. Yes, sir.

Q. You were then in Paris, were you?

A. I came in Paris about two weeks later.

Q. And he showed you what he had got in the way of pearls from this Eknayan?

A. Yes, sir.

Q. And did you examine them at that time?

A. Yes, sir.

Q. And how long did this collection of 43 pearls continue in that shape; that is, 43 pearls, how long?

A. How long did they stay like that?

Q. Yes.

A. Not one day.

Q. Not one day?

A. We changed them all the time. We put some pearls in it; we took pearls out.

Q. Now you speak of "we" all the time, Mr. Citroen; do you mean to include yourself with your brother, or do you mean to speak of it is a general term?

36 A. I mean "we" as, for instance, I had the pearls sometimes; some other time it was a wholesale man; some other time it was our partners, and you know we didn't consider the value of the goods when we act in our trade. We take a lot away, give it back; we give it on memorandum to somebody, that is the reason I say "we."

Q. So that you have had these pearls in your possession at different times for the purpose of making a sale, I take it; is that correct?

A. Yes, sir.

Q. And others connected with your brother have had them in their possession at different times for the prupose of making a sale?

A. Yes, sir; people connected.

Q. Now, I asked you a moment ago how long the 43 pearls continued in the one collection, if you know?

A. About two weeks.

Q. What did you do then?

A. Two weeks after my brother was in transaction with Boucheron in Paris.

Q. Who is he?

A. He is a jeweler.

Q. Now, what happened then?

A. He was in transaction for about 16 or 17 pearls, I think.

Q. Seventeen pearls?

A. Yes.

Q. And did he take out of this collection those pearls and put in those 17 that you speak of?

A. No; 17 pearls out of 43.

Q. Out of 43?

A. Yes.

Q. So that he took 17 out of 43 and undertook to make a deal with this man you have spoken of?

37 A. Yes.

Q. But he didn't make a deal?

A. No.

Q. So that he got back the 17 and had the original 43 again?

A. Yes.

Q. What next happened?

Mr. SMITH. I renew my objection as to this investigation of what happened to a lot of 43 pearls two or three years before these pearls

were imported into the United States. I don't wish to reopen this matter by argument, but I want it to appear hereafter that at every stage of this proceeding I renewed my objection to what I considered irrelevant.

Mr. KEMP. It seems to me that the Government should be permitted—we have started in with the beginning of the transaction—and follow it down to its close.

Gen. Appr. SHARRETTS. Objection overruled. It is understood that Mr. Smith's objection covers every form of this question.

Q. You say this deal did not terminate in anything in that deal, or proposed deal. What next did you do with these 43 pearls?

A. Lots of things. They went in different shape all over Paris and in London and in Berlin, and they were mixed with other pearls. They were put in different shapes and offered in the market.

Q. Well, then, you have said in a general way that they were pearls and continued to be circulating in the market for the purpose of sale?

A. Yes, sir.

38 Q. And the 43 pearls continued to be together as that number down to what time? When did you separate them?

A. They were not all together. They were not always together.

Q. Well, substantially, as you have said. You say they were not together, but when were the six separated from the 43, leaving the 37 pearls of the Leeds purchase?

A. At one moment Cartier, in Paris, a jeweler, he asked me for 37 pearls. He picked them up himself, and he asked me for those pearls on memorandum. He asked, too, my brother. I had nothing to do with them at the time, so he took those 37 pearls; six pearls were left at that time.

Q. What did he do with them?

A. With those pearls?

Q. With the 37, what did he do with the 37?

A. I believe that he showed them to different parties and that one of those parties was Mr. Leeds.

Q. You think that he actually made the sale then of this collection of pearls, do you?

A. I am sure.

Q. You are sure that the party made the sale?

A. He didn't make the sale in Paris. The pearls did not belong to him in Paris.

Q. Where did they belong to him?

A. They belonged to him here, after I delivered them here. I did not deliver the pearls to Mr. Leeds for myself. Cartier was here at that time. He arrived here on about June 20th and he wanted me to deliver him those pearls. I told him that I could not deliver those pearls for the moment, and I had asked to send the pearls back to Europe, and that in case I should obtain the right to send

39 the pearls back I would not deliver those pearls to him. And after a few days he went away, went back to Europe. He told

me, "If you want to deliver those pearls there for a customer of mine, Mr. Leeds, so instead of delivering them to me you please deliver to Mr. Leeds instead of myself." Neither my brother or myself had anything to do with Mr. Leeds. The only man we know, the only man we made a transaction with, the only man who paid us, is Mr. Cartier.

Q. Well, who is this Mr. Cartier?

A. It is a jewelry manufacturer; jeweler.

Q. Where?

A. Paris.

Q. Do you say that neither you nor your brother saw Mr. Leeds at any time during the transaction connected with the sale of these pearls?

A. No.

Q. You didn't see Mr. Leeds at all?

A. My brother has probably seen Mr. Leeds when in Paris. I may have seen him.

Q. Mr. Leeds was in Paris about this time, was he?

A. Yes.

Q. Was Mrs. Leeds there about this time?

A. Mrs. Leeds was there.

Q. You know Mrs. Leeds, do you?

A. I know her now.

Q. Did you know her when this purchase was made?

A. There was no purchase made in Paris.

Q. You knew her at that time? You have known her for a year or more?

A. No.

Q. How long have you known Mrs. Leeds?

40 A. I have known Mrs. Leeds seven or eight months.

Q. And you saw her in Paris?

A. Seven or eight months from now.

Q. And you saw her in Paris?

A. I saw her in Paris.

Q. Is your place of business—I mean you particularly—the same as your brother's in Paris?

A. Yes, sir.

Q. And you were frequently in that place of business, were you?

A. Yes, sir.

Q. Well, now, how frequently?

A. Every day.

Q. That is your headquarters?

A. When I am in Paris; yes. Sometimes I travel.

Q. Did you see either Mr. or Mrs. Leeds in your brother's place of business in Paris at any time?

A. I saw her once.

Q. And about when was that as connected with the sale of the pearls—before or after the sale of the pearls?

A. They came to the office with Cartier.

Q. With Cartier?

A. Yes.

Q. When you speak of "them," is that Mr. and Mrs. Leeds, both?
A. Mr. and Mrs. Leeds.
Q. And Cartier came to your brother's office?
A. Yes.
Q. And did they see these pearls at that time?
A. They saw those pearls. Cartier had those pearls in Paris.
Q. Cartier had them in his possession?
A. Yes.
41 Q. How long had he had them in his possession at that time?
A. How long? Do you mean to say since the first time?
Q. I mean the time he came to your brother's office with Mr. and Mrs. Leeds, how long did he have those pearls in his possession?
A. About two weeks, maybe three, maybe one.
Q. But at all events for some little time before?
A. Some little time.
Q. And did he have them with him before he came to your brother's office?
A. Yes.
Q. Were they taken out and shown at that time, with Mr. and Mrs. Leeds being present?
A. Yes.
Q. What else was done with them at that time?
A. They were left in our office.
Q. What conversation did you have relative to the sale of these pearls at that time?
A. My brother—I was not there.
Mr. SMITH. Wait a minute. You are not going to testify to a conversation your brother had when you were not there, are you?
Gen. Appr. MCCLELLAND. Limit yourself to what you heard.
Mr. SMITH. If you heard a conversation you can state it.
The WITNESS. So I went into the office——
Gen. Appr. SHARRETTS. Did you hear this or is it hearsay evidence?
The WITNESS. I came into the office; my brother introduced me to Mr. and Mrs. Leeds, and I went out a few minutes later, that is all I know.
42 Mr. SMITH. Well, now, any conversation you heard during those few minutes I have no objection to your stating, if Mr. Kemp wants it.
Q. Did you hear any conversation about these pearls?
A. No conversation that I remember about these pearls.
Q. Is that the only time that Mr. and Mrs. Leeds were in your brother's office or place of business that you know of?
A. Yes.
Q. That is the only time?
A. The only time.
Q. You don't know whether they had been there in his office before that or not?
A. I don't know; I believe they have not been.

Q. Do you know whether Cartier took the pearls away from him at the time he went off from your brother's office or not?

A. No.

Mr. SMITH. What do you mean that you do not know?

The WITNESS. They were left.

Q. They were left there in your brother's possession?

A. Yes.

Q. How long before they changed possession, before somebody else got them, if you know?

A. I do not understand.

Q. What was done with the pearls after Mr. and Mrs. Leeds went away and Cartier went away, by your brother; what became of them then?

A. They were sent over about a week later.

43 Gen. Appr. MCCLELLAND. Sent over to this country?

WITNESS. Yes, sir.

Gen. Appr. MCCLELLAND. And did they remain in your brother's possession until they were sent over here?

The WITNESS. Yes, sir.

Q. And did Cartier come over with them?

A. I brought them over.

Q. And did Cartier come over with you when you brought them over?

A. No.

Q. Was he before you when you came?

A. No.

Q. How long after you were here did he come?

A. About a week.

Q. Did Mr. Leeds come over with you?

A. No.

Q. Did he go over with Cartier?

A. He came over on the same steamer, but did not come over with him.

Q. I mean on the same steamer?

A. Yes, sir.

Q. But you brought the pearls over, the 37 pearls?

A. Yes, sir.

Q. Did you ever see any of these pearls, these 37 pearls, strung?

A. Yes.

Q. When?

A. Since three years.

Q. And what do you mean by stringing as a trade term, I want to know what you mean?

A. To put the string through the drills, through the holes.

44 Q. What kind of a string?

A. A silk string.

Q. And what is at the ends, clasps?

A. Bands.

Q. Well, would these have clasps?

A. Never clasps.

Q. Do you swear to that positively, that they never were with clasps?

A. I don't know if they had clasps, but I don't think—if they had a clasp. We had never those pearls with regular clasps, that means a jewelry clasp.

Q. But the 37 pearls were on a silk string at different times?

A. Oh, yes; at different times.

Q. During all those three years?

A. During the three years.

Q. Were they ever worn by anybody?

A. I don't know.

Q. That you don't know?

A. I don't know.

Q. Do you know whether Mrs. Leeds ever wore them or not?

A. I don't know.

Q. I mean in Paris?

A. Yes, of course.

Q. You understand that—that I mean in Paris?

A. Yes, I know; she wore those pearls here.

Q. But you don't understand whether she wore those pearls in Paris?

A. I don't know.

General Appraiser SHARRETTS. Did she wear them after she purchased them?

Mr. SMITH. They were delivered here.

45 General Appraiser SHARRETTS. And then she wore them?

Mr. SMITH. Yes.

The WITNESS. I do not know; I give the pearls, that is all that I know.

Q. Did you know anything about the arrangement, if there was an arrangement on the other side, for the amount which Mr. Leeds was to pay for these pearls?

A. I do not know.

Q. And did you know before you started to bring them over here whether they had been sold?

A. They were not sold; they were mine—they were my brother's.

Q. They were your brother's?

A. Yes, sir.

Q. They were your brother's at the time you brought them over here?

A. Yes, sir.

Q. And at the time you delivered them to Mr. Leeds how did they come to be his property? Or when did the title pass from your brother to Mr. Leeds?

A. My brother had nothing to do with Mr. Leeds. He acted with Cartier.

Q. Well, now, you say that when you started from the other side, the pearls were still your brother's?

A. Yes, sir.

Q. And they continued your brother's until what time?

A. Till the moment they were delivered here to Mr. Leeds by myself, acting for Cartier, who had to go back, who could not stay here.

46 Q. At the time you delivered them to Mr. Leeds was there any payment of money to you?

A. No, sir.

Q. And how was that arranged, if you know?

A. Leeds paid Cartier.

Q. Where did he pay Cartier?

Mr. SMITH. If you know?

(Question repeated.)

A. A check.

Q. When?

A. I do not remember exactly the date.

Q. Well, as near as you can?

Mr. SMITH. Did you see the check?

The WITNESS. I saw the check.

Mr. KEMP. Practically each time I have said, if you know.

Mr. SMITH. But I am afraid he may testify to things he don't know.

Q. Tell me as near as you can if you know when Mr. Leeds delivered to Mr. Cartier the check for these pearls?

A. I don't know.

Q. When did your brother get his pay, if you know?

A. The exact date I do not know.

Q. Well, approximately?

A. About July.

Q. Before you came away from Paris with these pearls?

A. If he was paid at that time, no.

Q. After you went back, was he paid?

A. When I went back he was paid.

Q. He had been paid?

47 A. He was not paid, he had a big part.

Q. Did he have his 27%?

A. He had 27% of what was paid.

Q. That had been paid to him, had it?

A. No, I mean to say he divided between the different people the amount. The full amount was not paid.

Q. Did you see the check Mr. Leeds gave for these pearls?

A. No.

Q. Did you take any memorandum or any writing from Mr. Leeds at the time you delivered these pearls to him?

A. No, sir.

Q. Where were you, in this city or elsewhere?

A. In Newport.

Q. You went with these pearls then to Newport?

A. Yes, sir.

Q. How long after you got here did you do that?

A. About five weeks.

Q. Were you that length of time getting them out of the custom-house?

A. No, sir.

Q. Where were they during all of this time, these five weeks?

A. In safe deposit.

Q. Where, some of these buildings?

A. Yes, 32 Liberty street.

Q. Did you see Mr. Leeds after you came here more than once?

A. Yes, sir.

Q. How soon after you came here did you see Mr. Leeds?

A. About a week.

Q. Did you see him on his arrival here?

A. After his arrival, yes.

48 Q. How soon after his arrival?

A. About two or three days.

Q. And where did you see him?

A. At his place.

Q. Here in New York?

A. In New York.

Q. Did you have the pearls with you?

A. No, sir.

Q. Who was with you at that time?

A. Cartier.

Q. Did you have any conversation with Mr. Leeds in the presence of Cartier respecting these pearls at the time you saw him?

A. Yes.

Q. Will you state what that was?

Mr. SMITH. I object.

Mr. KEMP. This was before delivery and sale had been completed.

Mr. SMITH. It was not before they had been passed through customs.

The WITNESS. It was after.

Q. How long were you in getting the goods through the customs?

A. Two days.

Q. Then you put them back in safe-deposit vault, did you?

A. Yes, sir.

Q. And shortly after that you saw Mr. Leeds?

A. Yes, sir; that depends what you call shortly; I call shortly a few days.

Q. At that time had those pearls been sold to Mr. Leeds?

A. No, sir.

Q. When was the sale made to Mr. Leeds?

49 A. The sale was made when he had the pearls.

Q. When was that?

A. In July.

Q. And where, in Newport as you stated?

A. In Newport.

Q. Then he was here in the neighborhood of five weeks, four weeks at least, before he got possession of the pearls, as far as you know?

A. I don't know.

Q. Do you know whether Mr. Leeds made any declaration in relation to these pearls at the custom-house when he came here?

A. I don't know.

Q. You don't know that?

A. I don't know that.

Q. He never told you?

A. He never told me.

Q. Did Mrs. Leeds come over with him?

A. She did.

Q. Was she in Newport when you delivered the pearls?

A. Yes, sir.

Q. In what condition did you deliver the pearls to her or Mr. Leeds?

A. As they came.

Q. Were they strung?

A. No, sir.

Q. Never had been strung on this side?

A. Never had been strung on this side.

Q. They were the same 37 pearls, however, that you started with from your brother, Hugo Citroen?

A. I think so.

Q. You had not changed them?

A. I did not change them.

50 By Gen. Appr. McCLELLAND:

Q. What instructions did you receive from your brother when he gave you the pearls to bring over to this country about the disposition you were to make of them?

A. He told me that he made an agreement with Cartier that Cartier would take those pearls if he wanted to deliver them in New York. He asked me to come and deliver those pearls to Cartier; so I went over.

Q. You came over purposely with the pearls?

A. Yes, sir.

Q. And did he say anything to you about money?

A. Nothing.

Q. Were you to deliver the pearls to him upon his request, or what other condition?

A. No other condition.

Q. Any time Cartier said he wanted those pearls, you were to give them to him?

A. No; I could give them, I was not obliged to give them.

Q. Did he ask you for them at any time?

A. Yes.

Q. And you did not deliver them?

A. I did not deliver them.

Q. For what reason?

A. I did not want to deliver them at that time. The Government claimed 50% additional duty, which I was unwilling to pay, and I asked to have the right to send my pearls back to France if they wanted to give me back my 10%, and I would not deliver the pearls to Cartier in that case.

Q. That request was refused, was it?

A. That request was refused.

51 Q. And subsequently the pearls were delivered by you personally to Mr. Leeds?

A. Yes; acting for Cartier. Cartier had to go away; he was here two or three weeks, and he had some important appointment over there. He said, "It was no use to stay; I will go back—and my customer is Mr. Leeds; if you do not mind, instead of delivering the pearls to me, you deliver them direct to Mr. Leeds."

Q. How long had Cartier been gone from this country when you delivered the pearls to Mr. Leeds?

A. About three, four weeks.

Q. And what did Cartier say to you about paying for the pearls when he went away?

A. He did not speak of payment.

Q. Did you know that the pearls had been paid for when you delivered them to Mr. Leeds?

A. They were not paid.

Q. When were they paid for after that, after the delivery? How long after you delivered the pearls to Mr. Leeds were they paid for?

A. I don't know. I believe—I was not paid by Mr. Leeds. My brother was paid by Cartier in Paris.

Q. And you never saw the check or the money that was paid?

A. No.

Q. Well, do you know whether they had already been paid for at the time you made the delivery?

A. No.

Mr. SMITH. What do you mean by no?

The WITNESS. That they were not paid.

52 Q. And how was the check, if you know, sent to Paris, or how was the payment made?

A. I don't know.

Q. You had no instructions from your brother at all except to deliver the pearls to Cartier, or anybody else, except to deliver them upon his order?

A. That's it.

Q. Was there any explanation made to you as to why you should bring those pearls over when Cartier was going one week later?

A. I was obliged to bring those pearls to be able to deliver them.

Q. What was the reason, if you know, why Cartier could not personally bring them over, inasmuch as he was coming one week later?

A. He did not want to take any risk of the pearls being lost or stolen or anything.

General Appraiser LUNT. Couldn't you have sent them by express?

The WITNESS. By express—somebody had to be here to deliver those pearls. Suppose one of those pearls should have been broken; he was not obliged to take it if I sent it by express. What proof have I if a pearl was broken or lost, or if a pearl is changed?

By Gen. Appr. MCCLELLAND:

Q. Suppose they had been sent one week later, and arrived at the same time Mr. Cartier arrived, couldn't he have taken care of them?

A. No. Suppose on the way the parcel is opened and five pearls are changed—they put small pearls instead of large pearls, or they put a bad pearl instead of a large pearl; now, Cartier comes
53 here; he opens the parcel—he says these are not the pearls I want to buy—I don't want to take it. What can I do. What proof have I got that the pearl has been changed, or if he says that one pearl has been cracked? Now, from what I hear, for instance, some of these pearls had been redrilled when they were here. Suppose one of these pearls will break—that happens sometimes; who was to pay for it? Is it Cartier, is it myself, is it Leeds, or is it somebody else?

Mr. Mr. KEMP:

Q. Now, Mr. Citroen, do you know whether or not Mr. Cartier saw Mr. Leeds after he got over here and made a sale of these pearls over here, or how was the business transacted?

A. A kind of agreement was made in Paris.

Q. Well, now, state that agreement, what you know about it.

A. What I know, that Cartier told me, that he was willing to take those pearls here; that he had a customer of his that was willing to take them. Cartier mentioned to my brother a certain price, at what price he would be willing to take those pearls here.

Q. State that price, please.

Mr. SMITH. I object to that as utterly unjustifiable—prying into the private business of these people.

Mr. KEMP. I will pry if I am permitted. I understand that they were grossly undervalued.

Mr. SMITH. I object to any question of the price paid by
54 Cartier to Citroen for these pearls as an unjustifiable intrusion of the private business of these people.

General Appraiser SHARRETTS. I would like to have Mr. Kemp explain the purpose of his question.

Mr. KEMP. Primarily it is to try to arrive at, if I can, what actually took place in reference to the sale of these pearls. There is some doubt, apparently, at any rate in my mind, as to when that transaction actually took place, and I want to find out how far it was concluded, if I can, on the other side, with Mr. Hugo Citroen. He is now stating that Mr. Cartier and his brother had some conversation, and a price was named; now, if it was a price which was substituted, the purchase price of these pearls, or other invoice price, it might be that I could

show that the deal was consummated there and fully completed, excepting the delivery.

Mr. SMITH. I submit that the question whether it was consummated there, or whether it was consummated here, or whether it was consummated in Asia or Africa, is absolutely immaterial, as the only question before this board is as to the rate of duty on a thing that was imported here.

Mr. KEMP. Now, I think further that this whole transaction ought to be before the board in order that the board may intelligently decide the classification of these pearls. I do not want it for any purpose other than the board's information, and if the board does not want it, all good and well.

55 General Appraiser SHARRETTS. Well, the board has already ruled on the proposition, Mr Kemp, that it is perfectly proper for you to ask a line of questions whether this was jewelry at one time or not, and if this is in furtherance of that plan I will overrule the objection. If your purpose was to show that there was an undervaluation—an undervaluation might be punishable by fine or imprisonment, and you could not get a man to testify against himself.

Mr. SMITH. Don't you see, Mr. Sharretts, if the admissibility or inadmissibility of testimony depends entirely upon the statement of the counsel who asks for it, and gives a reason as to why he wants it, why you can admit anything in evidence if the counsel states a reason for wanting it, and if you think it is a good reason.

General Appraiser SHARRETTS. If the question of law involved depends upon the answer of witnesses, he is entitled to it.

(Objection overruled.)

(Question repeated to witness.)

A. The price?

Q. The price talked of between Cartier and your brother?

A. About 15% profit on the price invoiced.

Q. Then the price mentioned to your brother by Cartier at this time was, as you say, about 15% over the invoice price of the merchandise?

A. Yes.

Q. Well, what took place then; was that agreed to by Cartier; were those figures satisfactory to Cartier that your brother gave him?

56 A. Yes.

Q. And did Cartier pay your brother any money at that time?

A. A small amount; yes.

Q. Well, of course you are dealing with large amounts; when you are speaking of the price of the pearls I don't know what you mean by small amount. What would you say?

A. Probably 20%.

Q. Of the invoice price?

A. On the invoice price.

Q. That would be how many francs, for instance?

A. About 100,000. My brother told me: "I think we take a risk. If he don't want to take possession of the pearls over there, we have to pay the duty and we have to leave the pearls over there, and I don't know if I do it unless he wants to give me a commission, which commission will save me in case he don't take possession of the pearls over there," and I know that Cartier first refused, and then he paid the amount: I don't know the amount.

Q. Did Cartier have different talks with your brother about these pearls and about their terms of agreement?

A. Oh, yes.

Q. Were you present at the time the final agreement was talked?

A. Never.

Q. Never was present when Cartier talked with your brother?

A. Never.

Q. Was there any written memorandum between your brother and Cartier with reference to those pearls at any time?

A. I don't know.

Q. You don't know anything about that?

57 A. No.

Q. But you are of the opinion, and you have thus stated, that Cartier did pay something on the pearls before you started over?

A. Yes.

Q. Was that conditional; was that payment by Cartier conditional upon their being delivered here?

A. Yes; what do you mean by conditional?

Q. Did Cartier make this payment in accordance with an agreement with your brother that the pearls should be delivered here?

A. Yes.

Q. And was it further agreed, or was there any further agreement between Cartier and your brother with reference to the sale of these pearls to Leeds by Cartier?

Mr. SMITH. I object. This witness has testified, he has been testifying, to a lot of transactions between his brother and Cartier, and he has afterwards admitted that he never was present at one of those transactions. He is telling a lot of hearsay evidence.

General Appraiser SHARRETTS. Mr. Kemp has asked him as coming from his own knowledge, and I think a great deal he said did not come within his own knowledge.

By General Appraiser SHARRETTS:

Q. Were you present when that understanding was reached?

A. No.

Q. How do you know there was an understanding?

A. By my brother.

58 General Appraiser SHARRETTS. It is all hearsay evidence.

(Objection sustained.)

By Mr. KEMP:

Q. You have mentioned a man by the name of Dreicer?

A. Yes, sir.

Q. Has he a house in Paris?
A. No, sir.
Q. He is here, has a house in this city, has he?
A. Yes, sir.
Q. Does he frequently go abroad?
A. Yes, sir.
Q. And what did he have to do with these pearls, if anything?
A. I don't know.
Q. Well, you have mentioned him; in what connection?
A. I or my brother showed him the pearls, part of these, all of these pearls together, at certain times, sometimes more pearls than that; and he made us an offer on five or six of these pearls. He mentioned a price, and we mentioned a price, then he bid a little more, and we went down a little, and were to a difference at one moment at about 5% or 6%. He did not want to increase his offer, and my brother did not want to reduce the price he mentioned, and he didn't take the pearls.
Q. How long ago was that?
A. That was about February, 1906.
Q. Were these 37 pearls together at that time?
A. No, sir.
Q. You have said, have you not, that you did show the 37 pearls to Dreicer?
59 A. I don't know if he has seen 37, he may have seen 39, he may have seen from 5 to 43, to 45 or 50 pearls.
Q. Will you say that these 37 pearls were not shown to Dreicer in a necklace?
A. In a necklace, never.
Q. Do you say that Dreicer never saw these pearls in your brother's possession as a necklace?
A. No, sir; not as a necklace.
Q. Do you know a man by the name of Bagg?
A. Yes.
Q. Do you know a man by the name of Eisenman?
A. Yes, sir; which Eisenman?
Q. Are there two Eisenmans?
A. There are two brothers.
Q. Do you know both of them?
A. Yes, sir.
Q. Do you know whether either Bagg or Eisenman ever saw these pearls in your brother's?
A. Which Eisenman?
Q. Either of them.
A. One has seen the pearls, and one has not.
Q. Which one saw them in Paris?
A. In Paris.
Q. The other has not?
A. Never.
Q. Has Bagg seen these pearls?

A. Maybe.
Q. How about A. H. Smith?
A. He has seen the pearls.
Q. When did he see them?
A. He saw them at different times. Different moments.
Q. Did your brother have any transactions with him or any dealing with him looking for the sale of these pearls?
60 A. Dealing, yes.
Q. With reference to these pearls now?
A. Not in these pearls, they were not in the same shape.
Q. In what shape were they when Smith saw them?
A. There were more pearls.
Q. How many?
A. 37, 39, 43.
Q. What do you know about it?
A. There may have been more.
Q. There may have been 37?
A. Yes.
Q. When these pearls were delivered to you by your brother were there 37 pearls at that time?
A. There were 37 pearls, yes.
Q. And were those 37 pearls taken by your brother from any other pearls and delivered to you at that time?
A. From any other pearls?
Q. Yes, from any other pearls.
A. I don't know.
Q. Did you see your brother at the time he made up those 5 packages and delivered them to you, or how did that take place?
A. He gave me the parcel.
Q. Which included these 5 packages; did you look at the pearls at that time?
A. I looked at the pearls, yes.
Q. You looked at the 37 pearls at that time; you finally took them into your possession?
A. Yes, sir.
Q. You looked at them I suppose for the purpose of knowing just what pearls you had?
A. Yes, sir.
61 Q. You knew them before that?
A. Yes.
Q. You have known them for years in that condition, have you?
A. In which condition?
Q. Well, I mean the 37 you have spoken of.
A. Oh, I knew nothing in that special condition? I knew those pearls among the others.
Q. Do you know how these 37 pearls were selected by your brother for you to turn over to Cartier? Did you know what was done to do that?

A. Cartier took these pearls back to us. He had taken those 37 pearls for a special purpose and he took them to his business place, and when he brought those pearls back to the office they were the same, I suppose so, as when he took them.

Q. So they had been 37 in number when they were delivered to Cartier some time previous to the time they were delivered to you, is that correct?

A. Cartier took those 37 pearls, and after a certain time he brought them back.

Q. And then they remained in that same condition substantially, and then your brother finally gave the same 37 pearls to you to deliver afterwards to Cartier, is that correct?

A. Yes, sir; that is correct.

Q. How long before your brother delivered to you did Cartier deliver them back to your brother?

A. About a week.

Q. Where was Leeds at this time, if you know?

A. In Paris, or in London, or on the road.

Q. But it was before that, I take it, you saw Leeds, was introduced to Mr. and Mrs. Leeds in the presence of Cartier in your brother's office?

A. Yes, sir.

62 Q. Was it before Cartier got the pearls from your brother or after?

A. After.

Q. And Cartier then had the pearls in his possession, did he, at the time Mr. and Mrs. Leeds were in your brother's office?

A. Yes, sir.

Q. From anything that was said there at that time, did you know whether Cartier was visiting your brother with reference to those pearls?

A. Yes, sir.

Q. So that was what brought Mr. and Mrs. Leeds and your brother and Cartier together at that time?

A. Yes, sir.

Q. It was these pearls?

A. It is always the same thing, according to what I have heard. I take that as fact.

Q. You take it as a fact, don't you?

A. I take it as a fact.

Q. Do you know whether your brother saw Mr. Leeds after that time or not; in other words, did Mr. and Mrs Leeds come to your brother's again before you started with the pearls to this side?

A. I don't know.

Q. That you don't know about?

A. No.

Q. So far as you do know, that was the 1st time that Leeds, Cartier, and Mrs Leeds were in your brother's office?

A. Yes, sir.

Q. And it was the last time that Mr. and Mrs. Leeds were in your brother's office separate from Cartier, so far as you know?

A. So far as I know.

63 Q. And the next time you saw Mr. Leeds was on this side, was it?

A. Yes, sir.

Q. Two days after his arrival?

A. Yes, sir.

Q. Can you state what conversation you had with Mr. Leeds at that time?

A. Yes, sir.

Q. Well?

A. I saw Cartier first.

Q. Where did you see Cartier?

A. Here.

Q. What conversation did you have with Cartier?

A. I told him I cannot deliver those pearls.

Q. Where was he at that time; where did the conversation take place?

A. It was at the Holland House.

Q. Well, state what you said?

Mr. SMITH. Just for the sake of showing you that I have not abandoned my position, I again object to any conversation between Citroen and Cartier, or Cartier, or Citroen, Cartier and Leeds, after these goods had been imported.

Mr. KEMP. I think it is material on the question as to what shape these pearls were in at the time of importation.

Mr. SMITH. He described what shape they were in.

Mr. KEMP. What the agreement was—what the arrangement was?

(Objection overruled.)

64 A. I told him that I could not deliver those pearls certainly, and for a moment or so Cartier was annoyed. He was disgusted, and he said to me, "If you don't mind, to go and see Mr. Leeds and you will explain the matter to him."

Gen. Appr. MCCLELLAND. Explain what?

The WITNESS. "Why you don't want to deliver him those pearls." So we went over, Mr. Cartier and myself; that was the first time I went to Mr. Leeds's house, and I told him. It took me about five minutes.

By Mr. KEMP:

Q. Just state what you told Mr. Leeds as near as you can remember?

A. I told him what I told to Cartier, that I couldn't deliver those pearls to Cartier.

Gen. Appr. MCCLELLAND. Did you tell him why?

WITNESS. I told him why.

Mr. SMITH. Well, tell us why; tell us what you told him.

WITNESS. According to what the custom-house told me at that time, that may be they will ask me 50% additional duty. The demand was not made. No official demand was made of 50% duty; the official demand of 50% additional duty was only made about ten days later. But I was advised by somebody in the collector's office—I don't remember who I saw there, I don't remember the name; they told
65 me they had been obliged to write to Washington to the Treasury Department to ask some instructions to know whether or not they had to ask 50% additional duty on those pearls. The pearls—the box in which those pearls came—were at that time sealed up by the appraiser, and I wanted to get the pearls like that, to be able to send them back, which I certainly would have done if my proposition, which I consider was certainly very fair, and would not have been refused by any business people in the case of an error in the transaction, would have been assented to by the Government. Now the Government did not want to accept my proposition, and I kept the pearls.

By Mr. KEMP:

Q. And was that what you told Mr. Leeds?

A. Yes. I told you more. I told him simply I did not want to deliver the pearls to Mr. Cartier; that I didn't know if I would be able to deliver them.

Q. You did not know if you will be able to deliver them; and what did Mr. Leeds say?

A. All right.

Q. What is that?

A. All right.

Q. That is all he said?

A. Yes.

Q. He didn't seem to care anything about it?

A. No.

Q. What next did you do then after that?

66 Mr. SMITH. Are we going to come all the way down to it?

Mr. KEMP. I want to find out all I can about this transaction.

A. I waited a few days, and after a few days the answer came from Washington to ask me 50% additional duty, so I went to Washington at that time. I saw there Secretary Shaw, and I told him that I could not pay 50% more duty, that the pearls were not worth that, and I asked him again to give me my 10% back, and send the pearls back to Europe. The offer was refused, and the 50% additional duty demand was maintained, so I came back to New York, and at that time Cartier went away; I don't know if it was before I went to Washington or after, and I went to Leeds, who was in Newport, and I delivered the pearls, those 37 pearls.

Q. I suppose you had been in communication with your brother over this matter after you got here, were you?

A. Yes, sir.

Q. And did you deliver the pearls to Mr. Leeds in accordance with the instructions which you had received in Paris from Mr. Cartier, or after you got back here? Were the instructions you got subsequent to those you got in Paris to deliver?

A. No; in Paris I had instructions to deliver the pearls to Cartier, so I wrote to my brother; I told him Cartier was gone, and he asked me to deliver the pearls to Leeds, and I didn't see any objection. I don't remember if I asked any instructions from my brother; I knew it was all right, it was the same as to what I had to do with these pearls.

67 Q. That is, according to your original instructions, you know it was all right to deliver to Mr. Leeds at Newport?

A. Yes, as I did to Cartier. I would have delivered them to anybody else.

Q. So you did not understand that the deal between your brother and Mr. Cartier had been changed in any way after you got over here, did you?

A. No.

NEW YORK, *May 2, 1907.*

Continued from April 30, 1907.

Cross-examination of Mr. Citroen by Mr. Kemp resumed.

Q. Did Mr. Leeds pay you any money at Newport?

A. No.

Q. Did he give you any memorandum at Newport?

A. No.

Q. You simply delivered the pearls to him there and that was the end of the deal, so far as you were concerned?

A. Yes, sir.

Q. Leeds had paid 10% or thereabouts on these pearls in Paris, had he?

Mr. SMITH. I ask that the witness be again cautioned to state nothing that is not of his own personal knowledge.

A. I had nothing to do with Mr. Leeds in Paris.

68 Q. Do you know whether he paid any money on these pearls in Paris or not?

A. I don't know.

Q. Do you know whether anybody paid any money to your brother in Paris?

A. Cartier.

Q. Cartier had paid your brother how much?

A. I don't know.

Q. 10% of the purchase price?

A. Yes, sir.

Q. More than that?

A. Not of purchase price.

Q. Of the invoice price?

A. It was a kind of guarantee.

Q. Guarantee for what?

A. In case we should have a loss.
Q. Where would the loss be?
A. If Cartier didn't take the pearls.
Q. You brought them over here didn't you?
A. After they were here.
Q. The pearls continued in your possession all the while they were here?
A. Yes, sir.
Q. And you kept them in your possession on strings, from your brother?
A. Yes, sir.
Q. And you didn't deliver them at any time to Cartier?
A. No, sir.
Q. And you were not instructed to deliver them at any time to Cartier, were you?
A. Yes.
Q. When?
A. In Paris.
Q. When did you deliver them to Cartier then?
69 A. In New York.
Q. Where in New York; any particular place?
A. No place.
Q. When you delivered them to Cartier, what then was to be done?
A. It was not sure that Cartier should take these pearls here.
Q. Not sure that he was to take them?
A. No.
Q. How did it come then that he gave this 10%?
A. That was our security that he was to take the pearls.
Q. Is that the general method of transacting business in relation to a sale of pearls?
A. In a big sale like that, yes.
Q. Did you ever have it done before?
A. Yes.
Q. Did you ever have it done with relation to these 37 pearls?
A. Not with these 37 pearls.
Q. You had these 37 pearls at various times in your possession for the purpose of making a sale?
A. Yes, sir.
Q. And you never at any time to anybody else made a security or guarantee in these same pearls?
A. No, sir.
Q. Did you go to the custom house with the pearls yourself?
A. No, sir.
Q. Who took the pearls to the custom house?
A. I don't know.
Q. Who did you deliver the pearls to?
A. I delivered the pearls to somebody at the custom house on the dock.

70 Q. Was it Mr. McEwen, or do you know his name?
A. I don't know the name.
Q. Did you take a receipt from him?
A. Yes, sir.
Q. Did you make a statement about the pearls on the dock?
A. I gave him my consular invoice.
Q. Did you also make a statement to him signed by yourself at that time?
A. Nothing.
Q. Did you make a statement to anybody about these pearls on your arrival here?
A. On the boat I gave at that time my invoice and I told that I had these pearls.
Q. You made a written statement, did you not, as to their value?
Mr. SMITH. I object to any questioning about the value of the pearls, or any statement he made as to the value. How can such an issue in any wise be relevant here? This is not a reappraisement case?
Mr. KEMP. I might just as well state that the question of value of these pearls to my mind becomes very material. I shall insist that it is one of the evidences of their condition at the time the sale was made, and that further it was indicative of the condition and the situation of the article itself, namely, that it was a necklace which had been matched, which had been assorted, and which had been put together for making the article into a necklace. I shall urge very strenuously at the proper time that it shall come before this board.
71 General Appraiser SHARRETTS. He is assuming now to show that this necklace, by reason of its great value, is worth more than 37 pearls of the same size are worth. That was a question that the court itself dealt with, saying that the assortment and matching and putting into condition enhanced the value very materially. Now, Mr. Kemp is leading up to that point to show that the necklace would have much more value than 37 pearls that were not matched.
Mr. SMITH. I have no objections to his asking about that. He is asking what statements he made about the value of these pearls, when that man had presented a written statement, consular invoice.
Mr. KEMP. It is simply to their value.
General Appraiser MCCLELLAND. If he made any declaration, you got it.
Mr. KEMP. Yes.
General Appraiser MCCLELLAND. The best evidence as to the contents of that declaration is the declaration itself.
Mr. KEMP. I won't press the question. This part of it may be immaterial.
General Appraiser SHARRETTS. You certainly have a right to ask this witness any question you want on the value of the necklace on the hypothesis you set forth.

General Appraiser McCLELLAND. It seems to me that anything that would tend to show that these 37 pearls had ever been made into the form of a necklace is pertinent, and it then becomes a question of law as to whether the fact that they were separated in their
72 importation still leaves them as jewelry within the meaning of the statute.

Mr. SMITH. I want it distinctly understood that I never at any stage of these proceedings, and I do not now make any objection to any question addressed to this or any other witness as to the use that these pearls were applied to on the other side. What I do object to is examining now as to consular invoice that he submitted on the dock.

General Appraiser SHARRETTS. He withdraws his question, so we do not have to rule on that.

(Cross-examination resumed.)

Q. Did you yourself personally pay the 10 per cent duty?

A. We didn't pay it personally.

Q. Well, who did, then, if you know?

A. A bank.

Q. A bank here?

A. Yes, sir.

Q. Then the 10 per cent was paid through a bank here?

A. Through a bank; yes.

Q. At your solicitation?

A. No, sir.

Q. Did you have anything to do with the paying or the arranging for the paying of the 10 per cent duty?

A. Yes, sir.

Q. State what you had to do with that.

73 A. Lazard Freres received a certain amount to be put at my disposition, and I have instructed Lazard Freres to take a check, custom duty check, from the First National Bank, and this duty check was turned over to the Government.

Q. And who furnished that money, if you know, to Lazard Freres?

A. My brother.

Q. Was it for this specific purpose, for the paying of duty on these particular pearls?

A. That was the intention.

Q. Did you see Mr. Stewart of the collector's office?

A. Yes, sir.

Q. In relation to these pearls?

A. Yes, sir.

Q. Did you also see Mr. Hamilton of the custom house?

A. I don't remember the name; I think it was Mr. Hamilton.

Q. Were Mr. Hamilton and Mr. Stewart together at the time you saw them concerning these pearls at the custom house?

A. I saw Mr. Hamilton first, I think; I don't remember exactly the name; I know that I went to one office, and I went after to the office of Mr. Stewart; I saw three or four different people.

Q. Did you have any conversation with Mr. Stewart about the pearls themselves?

A. Yes, sir.
Q. With Mr. Hamilton?
A. I don't remember the name.
Q. But you do remember Mr. Stewart particularly?
A. I remember Mr. Stewart.
74 Q. Did you state to Mr. Stewart in that conversation that this was a necklace on the other side?
A. No, sir.
Q. You can swear to that positively?
A. I swear to that.
Q. Did you state to Mr. Hamilton that it was a necklace on the other side?
A. No, sir.
Q. You swear to that positively?
A. Yes, sir.
Q. You said that to neither of these men or that in substance?
A. No, sir.
Q. Now, I take it from what you said that after you took these pearls into your possession on the other side you did not do anything with the pearls in the way of assorting or matching, did you, yourself?
A. The question is—I don't understand very well the question.
Q. After the delivery of these pearls to you by your brother—I mean the 37 pearls—did you assort them in any way before you delivered them to Mr. Leeds?
A. After the last delivery?
Q. After delivery to you by your brother, did you assort them in any way before delivery?
A. Yes, sir.
Q. What did you do in the way of assorting before delivering them to Mr. Leeds?
A. I have assorted them in size.
Q. In what way?
A. In size.
Q. Well, tell us how you assorted them in size?
A. I put them on a special plate we have got.
75 Q. And where did you do that?
A. In Newport.
Q. You say you assorted them in size in Newport on a plate?
A. Yes, sir.
Q. At Mr. Leed's house?
A. Yes, sir.
Q. Well, you did not take them from any other collection of pearls you had, did you; only had 37 pearls?
A. Yes, sir.
Q. You did not have any more?
A. I had some more.
Q. You brought other pearls with you, did you?
A. No, sir.

Q. Where did you get the other ones that you took to Mr. Leeds?
A. I had some pearls here.
Q. You had some pearls here?
A. Yes, sir.
Q. But you did not bring any from the other side, except the 37 that you have spoken of?
A. No, sir.
Q. Did you take any to make the 37 that you have spoken of from any other source than those given to you by your brother?
A. No, sir.
Q. So that you only used the 37 pearls that you got from your brother in making the assortment, final assortment, to Mr. Leeds?
A. No, sir.

Q. Let me understand you, Mr. Citroen, clearly. Now, as to
76 whether you delivered to Mr. Leeds in Newport any pearls in addition to the 37 pearls that your brother delivered to you in Paris?

A. Yes, sir.

Mr. SMITH. Wait a minute. I object. Here are goods that are imported here, entered, paid their duty. Now, I submit that what he does with them afterwards, whether he gave them to Mr. Leeds or threw them into the North River, is absolutely immaterial and incompetent in this case. How far are we going to trace these pearls after they got here? We have traced them through the custom house and payment of duty on them. I submit that this is absolutely inquisitorial to go and ask about what was done with these pearls after the duty was paid on them and the Government for the time being abandoned all claims.

Mr. KEMP. It all bears on the question whether these pearls were originally purchased for making a necklace If there were any changes, I think it is important.

Gen. Appr. MCCLELLAND. It is important if the assortment was actually done on the other side.

Mr. SMITH. Then why on earth should he be examined as to what was done on this side?

Mr. KEMP. If it wasn't a necklace then, we are at liberty to show that it was similar to a necklace and comes under that part of the paragraph which relates to pearls strung, in paragraph 434.

77 Gen. Appr. SHARRETTS. The point Mr. McClelland makes is that if a man bought any pearls which had never been strung it would not be material. Now, the testimony which you bring out shows that the assortment was done after the importation, and I agree with him.

Mr. SMITH. I am quite willing to state and put it down on the record that these 37 pearls were, after their importation and after a few of them had been redrilled and after a suitable clasp had been obtained, combined into a necklace, and that Mrs. Leeds is wearing that necklace now. Now, why should we spend a lot of time here

asking this witness what he did with these pearls after he passed them through the customs?

Mr. KEMP. I don't desire to prolong this hearing longer than it ought to be. This is the first admission that we have had that amounts to anything as to what was done with these pearls, and, further, from the testimony of Mr. Citroen it might very well have been inferred that the 37 pearls which he brought over here were so far changed that they never went into a completed necklace in Mr. Leeds' possession.

(Question withdrawn.)

Q. Now, Mr. Citroen, did you ever know the value of the largest pearl in that collection?

A. Yes, sir.

Q. Will you give it to us?

A. About 35 franc base.

Q. Now getting down to dollars and cents?

78 A. About $7.

Q. How much would that be when you have it all figured out?

Mr. SMITH. The price is in the invoice; I object to any questioning of this witness as to the value of the pearls on the ground that the invoice on which they were entered was passed and stands correct as to value.

Mr. KEMP. This is a question as to whether the aggregate of the single values of these pearls is greater or would be greater in loose shape than it would be on a string. He has testified that they would; I want to ask him some questions on that branch of the case.

(Objection overruled.)

Q. What do you say was the value?

A. 1848 francs to the grain; that is about $65 and some cents a grain.

Q. And how many grains did it weigh?

A. 52¾ and 1/16.

Q. Have you any statement that you can read off and give separate values of these individual pearls?

A. No, sir.

Q. Now, it will be necessary, if the board will permit me, for you to get that as early as you can, for I wish to ask you with reference to each and every pearl. Now, get at it in your own way.

By Gen. Appr. SHARRETTS:

Q. Did you put a separate value on each separate pearl?

79 A. I put a separate value on the different papers. One paper contained one pearl; another one, six; another one, eight; another one, ten; another one, twelve.

By Mr. KEMP:

Q. I am willing, if you can state, to take the approximate valuation. Now, take the six; was there any real or substantial difference in the value of these six pearls?

A. Yes, sir; big difference in value really.

Q. Were those six pearls different in weight and different in size?

A. Different in weight and different in size.

Q. Different in weight, and different in size, and different in value?

A. Different in value.

Q. In matching, in assorting these pearls for the purpose of showing them to a customer, do you begin with a large pearl first?

A. It depends; we have got absolutely no rule.

Q. Well, in this case do you know what was done? Did you produce a large pearl and match up to the large pearl?

A. When?

Q. When these were shown to Mr. Leeds or Mr. Cartier, when you showed them for instance?

A. To Mr. Cartier?

Q. Yes; when you showed them to Mr. Cartier did you begin with the large pearl and match up to that?

A. He took the pearls himself.

Q. He took the large pearl?

80 A. He picked the pearls; I don't remember whether he picked the large one or small one first.

Q. Are you prepared to state here, then, in arranging these pearls you are just as liable to begin with the smallest pearl first of the 37 as you would be with the largest?

A. Yes, or the middle.

Q. Or the middle, or the ends—one end or the other end, is that correct?

A. Yes, sir.

By Gen. Appr. SHARRETTS:

Q. In arranging this sale between your firm or between your brother and Mr. Cartier, was it based on the ordinary manner of selling pearls at so much per base?

A. We have got no regular way to do this. Generally a big necklace is sold on an amount, and this amount of course is recokned by base and by value of each pearl in a big necklace; that is the only way.

Q. Now, in making this arrangement or understanding of sale between Cartier and your brother, was that on the same base, base of the pearls, so much on the base?

A. No; it was too big a difference in the quality of the pearls, and the only way was to come to a price or to come to a value to each pearl. Now, we stated a price and Mr. Cartier was able to take his own value. He may have been higher on some pearls and may have been lower on some other pearls, and we came to about the same price; that was the only interesting point to us; if Mr. Cartier

81 came 20 per cent higher on one pearl and 20 per cent lower on another, we did not care.

By Mr. KEMP:

Q. Can you give me the weight of the next pearl in size to the largest one?

A. It was about 41 grains.
Q. Now, what was the weight of the next one?
A. About 39.
Q. What was the weight of the next one?
A. About the same weight.
Q. A little less or a little more?
A. A little less, probably.
Q. And the next one?
A. I don't know what you call the next one.
Q. Well, you have given us now two of the six; give us the third largest one of the six?
A. I gave you three.
Q. Well, give us the fourth one then.
A. It is about the same with a difference of one grain, maybe two grains.
Q. So that these six that were in one package you think differed in size, differed in weight about a grain each?
A. About two, three grains each; yes.
Q. And when you came to the next package of 8, what was the largest one of them, if you remember?
A. The average of the eight pearls was 30 grains; so it may be that the largest was 33, 34, and the smallest one I don't know—26, 27.
Q. So that would those 8, probably as you remember, decrease in weight about a grain each.
A. Yes, sir; about a grain.
Q. About a half, or something like that?
82 A. Between one and three grains; it may be that four of the eight would weigh exactly the same; it was possible.
Q. Now get down to the ten, what was the largest of the ten?
A. It must have been about 26 grains; and the smallest one 20 gr.
Q. The smallest one 20 and the largest one 26?
A. Yes, sir; I take that by the ten pearls.
Q. So that the ten pearls would decrease in weight probably about a grain apiece, something like that?
A. Yes; always with some pearl which may be from the same weight.
Q. And the twelve pearls, what was the largest of the twelve?
A. About 20 to 21 grains.
Q. And the smallest?
A. About 16 grains, may be.
Q. So that the twelve pearls decreased less than a grain apiece in weight, do you think?
A. Well, I don't know; it must be about one grain; yes.
Q. That would be the end of the 37 pearls then?
A. Yes, sir.
Q. Now you spoke of six other pearls which were connected with this collection at one time; can you give me the size of these?
A. No, sir.
Mr. SMITH. I object to that.

Q. Were they larger or smaller?

Mr. SMITH. I object; it is immaterial.

83 A. (The witness.) I can't answer.

Q. Were these six pearls that you have spoken of as being part of this collection at one time brought over by you?

A. About which six pearls?

Q. I understood you to say that this collection at one time was a collection of 43 pearls.

A. Yes; but it was also a collection of 45 pearls; it was also a collection of less.

Q. Did you bring all the six pearls, making 43 pearls, over here to deliver to Mr. Leeds?

A. No, sir.

Q. Now, can you give us a general description of the color of these pearls—the 37?

A. These pearls were what we call oriental pearls.

Q. Does that generally describe all pearls?

A. That is a certain kind of pearl; yes, sir. There are big differences.

Q. Speaking of these 37 pearls, give us in a general way a description of them as to their color, whether light color, pinkish color, and in particular reference——

A. Some were pinkish color, some were white color, some were a little yellow; some were brilliant; some were dull; some had a fine skin; some others hadn't; some had rather big holes.

Q. You spoke of redrilling; what did that consist of, enlarging the hole or making another hole?

A. Enlarging the hole.

Q. It did not make a third hole in any of these pearls?

A. No, sir; I did not make any hole.

Q. Did you see anybody who made a third hole for the purpose of making some of the holes larger?

84 A. Yes, sir.

Q. Was there any other thing done in the manipulating of these pearls, generally, after you brought them over here?

A. I believe they were put on a string.

Q. Well, now, what else?

A. Mr. and Mrs. Leeds has got them.

Q. Well, so far as you know, nothing else except putting them on a string—the 37 pearls?

A. I don't see what can be done.

Q. But I want to know if there was anything else done so far as you know?

A. I don't know.

Q. You speak of their being drilled; can you tell me the proportion of pearls that come into the market from India, or the oriental pearls that are drilled and sold as drilled pearls?

A. Oh, that is very difficult; I believe that 95 per cent come drilled.

Q. And is it a fact or not that the orientals are skillful in drilling pearls?

A. I don't understand.

Q. Is it a fact that the orientals who drill the pearls are skilled in drilling pearls?

A. Everybody who drills pearls are very skilled; it is so very dangerous to do.

Q. So that so far as these pearls were concerned, they did not differ in respect to that from practically 95 per cent of the pearls that come into the market?

A. Yes, sir; they did not differ.

Q. Do you say that the drilling of a pearl lessens its value?

85 A. It never increases, and sometimes decreases very much.

Q. Do you know under what conditions it decreases very much?

A. The condition if the pearl is not put in a necklace; for instance this brooch and jewelry that I show [referring to the exhibits]; the value of a pearl drilled is half the value of an undrilled pearl.

Q. That is because it didn't go into a necklace, isn't it?

A. They were in a necklace probably before.

Q. It was because its ultimate use is not in a necklace, isn't that so?

A. Yes.

Q. In other words, is there any kind of jewelry that you know of as a dealer, pearl jewelry I mean, that is more valuable than a necklace of pearls?

A. Yes, sir.

Q. What is it?

A. A collection of pearls undrilled.

Q. Do you say that these 37 pearls, assuming that they went into a necklace, were of less value than the same 37 pearls would be if they were undrilled?

A. Yes, sir.

Q. Now tell us for what purpose?

A. If a man could find a collection of undrilled pearls like that it would be interesting for him may be.

Q. It would be an unusual thing to find in the market?

A. No; not at all; I could find ten collections in six months' time.

Q. Undrilled pearls?

A. Not undrilled, no; I say it would be more interesting un-

86 drilled. It could be sold to different parties to be mounted as a ring.

Q. Would the largest pearl in that necklace be more valuable in a ring than in the necklace?

A. As an expert, I believe that a pearly like that undrilled would be worth $12 base.

Q. As against what?

A. As against $7 base.

Q. But support it is drilled, then what?

A. It would be worth $7.

Q. And would it be worth as much in any other place or shape as it would be in this collection of 37 pearls?

A. The pearls would be worth $7; yes, sir.

Q. Is there any other use that you could make of a drilled pearl as this was other than a necklace?

A. Yes, sir.

Q. Now state what other use you could make of this pearl, drilled as it was?

A. You could mount it in almost every way. You could have a ring made of it; you could put it on a small string.

Q. Separate, alone?

A. Alone, you can have a levallier; that is, a kind of little brooch hanging around the neck.

Q. Well now, as a marketable proposition in trade, is there any place where you could show that ring, I mean that pearl, drilled as it was, where it would be more valuable than in the collection in which it was?

A. Yes, sir.

Q. There is such a place?

A. Yes, sir.

General Appraiser McCLELLAND. Is there any dispute that this was a collection of pearls before it left Paris?

87 Mr. SMITH. What do you mean by a collection of pearls?

General Appraiser McCLELLAND. A collection of 37 pearls arranged suitably to be made into a necklace?

Mr. SMITH. No.

General Appraiser McCLELLAND. What are we talking about?

Mr. SMITH. I don't know what we are talking about; I have objected to it 25 times.

General Appraiser McCLELLAND. If it was agreed that they were sold for the purpose of being made into a necklace in Paris——

Mr. SMITH. I want to tell you, Mr. McClelland, that before this case came on for hearing before this board I told the Assistant Secretary of the Treasury in his office in Washington that if they would draw up a plain statement of facts in this matter I would admit them.

General Appraiser McCLELLAND. If you are willing to stipulate that they were a collection before they left France, that would eliminate that feature of the testimony.

Mr. SMITH. I have not only admitted but proved by this witness that he had this collection of 37 pearls, formerly 43 pearls; that he showed them to various parties and offered them for sale.

General Appraiser SHARRETTS. I think that the witness that is now being introduced is perfectly competent in this cross-examination. You yourself in your examination raised the question whether

88 a drilled pearl was worth as much as an undrilled, and he said it was not; now Mr. Kemp is trying to cross-examine him in this.

General Appraiser McCLELLAND. How will it help us in this issue?

Mr. KEMP. It is just like this: This man has gone on here and has sworn him right in the Tiffany case. He has sworn him in every pearl case that has gone on before this board for the last four or five years, and in doing that he swears that this thing in a necklace form would be of less value than it would be in separate form, and I am trying to get how he gets that value.

Mr. SMITH. I have not only asked this witness, but I have asked the other witness, and I am going to ask more witnesses, and it is entirely competent for the gentleman to bring other witnesses to contradict.

General Appraiser MCCLELLAND. I don't see how this is going to determine the question as to whether this collection of pearls is subject to a jewelry duty or a pearl duty.

Mr. KEMP. I must, in trying this case, try to dodge and get this witness to testify to facts which take it out of decided cases. And if I cannot get this witness to take it out of decided cases, I might as well throw it off my hands. Here is a case which will settle for all time whether a man can take a pearl necklace and, putting the string in one pocket, enter them as pearls.

General Appraiser MCCLELLAND. But how is this testimony that you have been bringing out now going to solve this question?

89 Mr. KEMP. I can not tell what particular feature of this testimony may be regarded by either of you gentlemen as decidedly material.

General Appraiser SHARRETTS. I think this is perfectly competent.

(Cross-examination resumed.)

Q. You have stated that these pearls differed in color?

A. Yes.

Q. Will you state whether the six pearls that you mention, as between themselves, differed in color?

A. Yes, sir.

Q. Now, state how much, and what?

A. I don't remember how much.

Q. Do you mean to say that the six pearls were not suitable to be matched?

A. With the large pearl?

Q. Yes.

A. The two pearls——

Q. Do you mean to state that the six pearls were not suitable in color to be matched to the seventh pearl, the largest pearl?

A. They could go in, yes.

Q. Be suitable for that collection?

A. Yes.

Q. And take the eight, take the color of the eight?

A. The 8, for some people they were able to match.

90 Q. Or for trade purposes, for jewelry trade purposes, take the 8 and state what was the color of the 8?

A. They were different.

Q. Different from the six?

A. Yes, sir.

Q. In what respect?

A. They were not from the same color.

Q. In what respect?

A. Some were whitish, some were yellowish, some were pinkish.

Q. Were they suitable or not to be matched with the seventh? You have just testified as to the six and the larger one.

A. If you want to get to the point, I will explain to you everything. As an expert I want to say it is impossible to answer yes or no to this question. Some people may find that some pearls match and some others not, so it is only a question if you take four-grain black pearls, round, and this five-grain pearl, white pearl, that pear shaped, some people may think they can match them; any pearl may match with another one, and with this collection I think they did not match.

General Appraiser SHARRETTS. Were they matched as to color, that is what he asked you?

The WITNESS. They may go together; they were different quality, and some people I could not sell them to if they were big experts.

General Appraiser MCCLELLAND. Do you mean to say that the question whether they matched is a matter of individual opinion?

91 The WITNESS. Absolutely. Myself, I find it did not match; they were not perfect.

Q. Now, will you state in what respect the 8 pearls differed from the six pearls of the 37 pearls in color?

A. I have stated some were whiter, but were the same size. Any two pearls in the same color—I don't believe that in the whole world there are two pearls that were exactly the same color and the same size and the same shape.

Q. Were these 8 pearls colored suitably to go with the six pearls and the large pearl of these 37 pearls for the purpose of making a necklace?

A. For a man who would think that they would go well enough together, I say yes.

Q. And in the trade, do you know would that be so considered?

A. Yes; for some people, yes; for some others, no.

Q. Well, then, you are not prepared to state that the 8 differed so much in color that they were unsuitable to be matched with the six and the large one for the purpose of making a necklace, are you?

A. They can go, yes; with some people.

Q. Now, take the ten that you have mentioned?

A. Same answer.

Q. Take the 12?

A. Same answer.

Q. So that the whole collection of the 37 pearls, so far as the color was concerned, were suitable to go together for the purpose of making a necklace; is that correct?

A. Yes, sir; they were suitable for some people.

92 Q. Well, in the trade; if you are taking these 37 pearls to show to the trade, to show to a possible purchaser, would you consider that they were so far alike in color as to be suitable to be shown as a necklace?

A. For a man who can use them, yes.

Q. Now, you have stated size and the color; in what other respects did the pearls differ?

A. In quality.

Q. Now, begin with the six; were the six of such a quality as to be suitable in the way of assembling them with the seventh, with the largest?

A. I have already answered.

Q. You have already answered that they were?

A. I have already answered that question; that is a question of appreciation.

Q. So far as you are concerned, as an expert would you put those six with the seventh for the purpose of a necklace?

A. If I find a customer who wants to buy them, I would do it.

Q. Well, now, take the 8 that you speak of, the quality of the 8—in what respect did they differ from the quality of the six, so far as the purpose of making a necklace?

A. I still answer that they could go; those pearls could go in.

Q. Do you now say that so far as the package of 6 was concerned, so far as the package of 8 is concerned, so far as the package of ten is concerned, and so far as the package of 12 is concerned, as to their qualities, that they would be suitable to be put together for the purpose of making a necklace?

A. For a man who finds it so, yes; for a man who don't find it, no.

93 Q. Well, take the average of men or the average of customers that you presented this collection to, would you say they would regard it as suitable in quality for the purpose of forming a necklace?

A. I believe that for 8 out of 10 they would not.

Q. And still your brother kept these 37 pearls and tried to sell them as a necklace when you say they were not fit to be put together?

A. I said we tried to sell them separately.

Q. But you had them repeatedly for the purpose of selling these 37 pearls as a collection?

A. I would have sold those 45 pearls.

Q. But the 37 pearls you have had together for the purpose of selling as a collection?

A. Yes; for some time.

Q. Do you know what Mr. Leeds paid for these pearls?

A. No, sir.

Q. Are you prepared to say that Mr. Leeds did not pay $360,000 for this collection?

Mr. SMITH. Mr. Citroen, if you know what he has asked you, tell him. If you don't know, say you don't.

A. I know; that means, so far as Cartier told me that he didn't pay $360,000.

Q. Was the figure $360,000 mentioned between you and Cartier as a price of the supposed price of this aggregation of pearls?

A. Yes, sir; not as a supposed price, as an asking price.

Q. When did you talk with Cartier about that price, after you came over here or before you came over her?

A. Before.

94 Q. So that you understood the asking price to be $360,000, did you?

A. Yes, sir.

Q. And of that $360,000 what percentage was to go to the seller?

A. Which seller?

Q. Mr. Cartier or your brother, either one?

A. My brother had nothing to do with the price Mr. Cartier made.

Q. He had nothing to do with it, with the price Mr. Cartier made?

A. No, sir.

Q. Then did he sell the pearls to Mr. Cartier?

A. Yes, sir.

Q. When did he sell them to Mr. Cartier?

A. Through me here; I was a representative of my brother; I was the owner of the pearls here and I sold the pearls here to Mr. Cartier.

Q. Well what did you sell the pearls here to Mr. Cartier for?

Mr. SMITH. I object to that as irrelevant.

Q. You sold the pearls here to Mr. Cartier?

A. Yes, sir.

Q. And to whom did Mr. Cartier sell them?

A. I don't know.

Q. You don't know?

A. No; I believe it must be to Mr. Leeds; what proof I have got I don't know.

Q. Then the sale to Mr. Leeds was made on this side, if you know?

A. Yes, sir.

Q. And all you know about that is what you have stated, is it?

95 A. Yes, sir.

Q. Isn't it a fact that Mr. Leeds bought those on the other side of your brother?

A. He didn't.

Q. Isn't it a fact that your brother made a consular declaration with reference to these pearls?

A. We had yet to ship those goods, yet to make consular declaration.

Q. What do you say, Mr. Citroen, as to whether the six pearls, and the 8 pearls, and the 10 pearls, and the 12 pearls, and the one pearl were not matched suitable for the purpose of making a necklace?

A. I did not say that.

Q. What do you say as to whether they were or not?

A. Myself?

Q. Yes.

A. They could go in a necklace; they could, not well.

Q. Do you know of any necklace that you have had in charge that had a greater value than the one you were just testifying about?

A. Greater value in quality?

Q. No, in price, dollars and cents?

A. I have one.

Q. One?

A. Yes, and my brother had one about the same.

Q. Your brother during his entire experience as a dealer had one necklace which was about the same value as this one; is that correct?

A. Yes, sir.

Q. Now, in your experience have you ever had the sale of marketing of any necklace which had a greater value than this one?

96 A. Oh, yes, there are quite some.

Q. Have you?

A. If I had them myself?

Q. Yes.

A. No, sir.

Q. I suppose you will agree, or you will be willing to state, that these pearls were put together or aggregated for the purpose of making a necklace ultimately, won't you?

A. No, sir; which?

Q. The 37.

A. The 37, they were together.

Q. They were put together for the purpose of making a necklace ultimately, were they not?

A. They were together.

Q. As a necklace at one time?

A. I don't know.

Q. That you don't know?

A. No.

Q. But they were finally put together as a necklace, were they not?

A. I don't know that they were put in a necklace here; I think so.

Q. And the purpose of putting the 6, and the 8, and the 10 and the 12 together with the one large one was for the purpose of making an article of jewelry, of one necklace, was it not?

A. I suppose.

Q. You suppose that was the case?

A. Yes.

Q. And that was what you understood when you started with them on the other side, was it?

A. I knew that Cartier was willing to take those pearls; that was the question which interested me.

97 Q. And put them in a necklace yourself?

A. I did not care what he did with it.

Q. Do you want to say, then, that you did not understand before you left on the other side that they were not to be put into a necklace?

A. I said I did not care.

Q. That does not quite answer. State whether you knew or did not know when you started with them if they were finally to be put into a necklace?

A. I knew that, as every pearl would go into this country would have to go into some article of jewelry.

Q. And you stated that the whole 37 were to go into a single necklace?

A. No; not single necklace.

Q. You swear to that?

A. In an article of jewelry, yes; but if it was to go in one necklace or in rows or three strand necklace, I don't know.

Q. But it was such a collection of pearls as would make and would be sold as a necklace or could be sold as a necklace?

A. It could be sold.

Q. As a necklace—pearl necklace?

A. Yes; as a pearl necklace.

Q. And that without any further matching or selection?

A. For somebody who found that they matched well enough, that they are large enough; if a lady has got a small neck it would go.

Q. Answer all the purposes of a pearl necklace?

A. Yes; the length was not big enough, really; you could not make a necklace with those 37 pearls like that.

Q. Unless the woman's neck was small?

98 A. Unless it was very small.

Q. Can you give us the length of the string that these 37 pearls would make?

A. I don't know the figure in English; I think they will make about 30 c. m.; that is, about two and a fraction to the inch.

Q. Could you give us the diameter of the largest pearl from your computation of 52 grains?

A. It must be about one c. m.

Q. And you say that these 37 pearls would only make a string 12 inches long?

A. Yes, sir.

Q. Now, taking those 37 pearls in the condition in which you got them from your brother, do you know of any collection of pearls or any condition in which those 37 pearls could be placed that will make them more valuable than if you put them into a necklace?

A. The value is a question of appreciation; I don't know.

Q. You don't know of any other situation that they could be put into as an article of jewelry that would make them more valuable than the form of a necklace?

A. No; I should think that the condition where they were was less valuable.

Q. You said that you sold those pearls to Cartier on this side?

A. Yes, sir.

Q. Did you deliver them at the time you sold them to Cartier?

A. No, sir.

Q. Where were you at the time you made this sale to Cartier?

A. I was here.

99 Q. Well, in what place, for instance, Holland House?

A. No, I have stated last time that Cartier had to go away, and he asked me to deliver the pearls to Mr. Leeds. He told me that he was willing to take it, that Cartier was willing to take the pearls if Mr. Leeds was willing to take the pearls.

Q. Then the sale to Cartier of the pearls by you was conditional upon their ultimately being accepted by Mr. Leeds, is that correct?

A. Yes, sir.

Q. Did Cartier give you any money on the sale on these pearls?

A. That means that I had recourse if Cartier would not have taken these pearls; if Mr. Leeds would not have taken these pearls, I had nothing to do against Mr. Leeds; I would have an action against Cartier; I would have asked Cartier to come back and take those pearls.

Q. You have stated then that you would look to Cartier and not to Leeds, provided Leeds did not take the pearls?

A. Yes, sir.

Q. Did you agree with Cartier on the price at which he was to take the pearls here?

A. Yes, sir.

Q. That was an independent agreement aside from that your brother made after you got here with Cartier?

A. That was already arranged in Paris, but it was not confirmed here. We made no agreement you see; it was only talk—the way that we do business.

Q. Did you give the man a memorandum of the pearls?

A. No.

100 Q. Did he pay you any money on the pearls?

A. No.

Q. And you didn't deliver them to him?

A. No, sir.

Q. And never had after that time?

A. No, sir; he was not here.

Q. He finally told you to deliver them to Leeds and you did?

A. Yes, sir.

Q. And he took them?

A. Yes, sir.

Q. How long before you delivered these pearls to Leeds did Cartier go back home?

A. Three or four weeks.

Q. Did the price at which Leeds was to take these pearls include the 60 per cent duty, if you know?

A. No; I don't know what Cartier did with Leeds. I know what I have done with Cartier; I knew that I figured with Cartier on a price of 10 per cent.

Q. Was that after you knew that there was likely to be trouble when you made entry of the goods?

A. Before.

Q. How soon after you paid your 10 per cent duty did you learn that there might be additional duty required of you?

A. About 5 days.

Q. About 5 days?

A. Yes; I don't remember; may be three; may be 8.

Q. And from what source did you learn that the extra duty might be asked of you?

A. When Mr. Stewart or somebody else asked me to go down to the custom house and they told me that they would write to
101 Washington to ask the Department of the Treasury for instructions to know whether or not whether they would claim 50 per cent additional duty; in the same time they stated they were confident that the duty I paid was correct.

Q. Who stated that, please?

A. Mr. Stewart or Mr. Hamilton; I have told you I have spoken to two or three there. I don't remember any name.

Q. And at that time didn't you state to them—admit to them—that this was a necklace on the other side?

A. No, sir; and I have told them: "If you will want I will give you the pearls back; they are still in the docks sealed by the appraiser; I am not able to pay 50 per cent additional duty; I could do absolutely nothing with the pearls here. It can only be a mistake if I had to pay 50 per cent, a mistake which I have done by the declaration made to me by the official people, and I ask you in that case to give me back my ten per cent and to ship the goods back to Europe. They are sealed up; nothing can be changed, and I would have a big lease, and I don't want to begin any lawsuit with anybody."

Q. Did you know anything about whether the invoice price was the price at which you sold or your brother agreed to sell the pearls to Cartier or to make the sale?

A. Less our profit.

Q. Less your profit?

A. Yes.

Q. And you told me, I think, that was 15 per cent?

A. About; yes.

Q. So that the real price on the other side of these pearls was about $200,000; is that correct?

102 A. More than that.

Q. Well, I want your figures; that is all?

A. It was about $223,000.

Q. That included, I understand, your profit?

A. No.

Q. Your profit was above that?

A. Above that.

Q. Did that include the 10 per cent duty?

A. No; I paid the 10 per cent here.

Q. But if you had been selling this to a customer on the other side without payment of duty, then the value over there would have been around $220,000?

A. Yes; $220,000. I want to say the $220,000 was, according to my expert knowledge, the wholesale market value in Paris of these pearls.

Q. That did not include your profit?

A. No.

Q. Nor any duty?

A. No duty.

Q. Now, you stated that about 5 days after you came here you had this conversation with Mr. Stewart about additional value?

A. Yes, sir.

Q. Was that before you made arrangement with Cartier to deliver them?

A. Yes, sir.

Q. And before you delivered them to Mr. Leeds?

A. Yes, sir.

Q. Had anything in the meantime been done to arrange for the extra duty?

A. No, sir.

Q. So that you delivered them to Mr. Leeds with the question unsettled as to whether you would pay the 50 per cent additional duty or not?

A. Oh, no; it was settled at that time.

Q. You had paid?

103 A. I had not paid.

Q. But you had arranged to pay the same?

A. Yes, because the Government claimed from me.

Q. And no additional price, then, was paid by Mr. Leeds so far as you know other than what he had arranged with your brother on the other side through Cartier?

A. Mr. Leeds arranged nothing with my brother. I knew that Cartier did not pay him 1 per cent additional on account.

Q. So far as you know by Mr. Leeds?

A. I don't see why he should.

NATHAN KAUFFMANN, a witness called on behalf of the importer, having been duly sworn, testified as follows:

By Mr. SMITH:

Q. Mr. Kauffmann, what is your business?

A. Precious stones.

Q. A dealer in precious stones?

A. Dealer in precious stones.

Q. Where?

A. I am at present in Paris.

Q. How long have you been in that business there?

A. Five years, about.

Q. Were you in the same business in the United States before that time?

A. Yes, sir.

Q. Where?

104 A. In John street and Maiden lane.

Q. For how many years altogether have you been in the jewelry business?

A. Twenty years.

Q. You deal in precious stones?

A. I do.

Q. Valuable precious stones?

A. Yes, sir.

Q. And in considerable quantities?

A. Well, yes.

Q. For how many years have you been dealing in pearls?

A. Well, about ten years.

Q. On a large scale?

A. I don't know what you call a large scale.

Q. I don't want to make you out the largest or the smallest; I want it to appear that you are a large dealer. Do you know Hugo Citroen?

A. I do.

Q. And his brother Bernard, who has been a witness here to-day?

A. Yes, sir.

Q. Referring to this collection of 37 pearls that is under consideration here. Did you see that collection?

A. Yes, sir.

Q. Where, in Paris?

A. Yes.

Q. When?

A. Over a year ago.

Q. Did you examine it?

A. Yes, sir.

Q. Referring to the pearls which composed that assemblage, will you state whether they were of the same size, or different size?

A. Different size.

105 Q. Were they of the same color, or different colors?

A. Different colors.

Q. Same quality or different qualities?

A. They were different qualities.

Q. Were they drilled or undrilled?

A. Drilled through.

Q. Did you at any time examine that collection with a view to estimating its value?

A. Yes.

Q. When you do a thing like that, just state how you arrive at it.

A. Well, we look at each pearl, examine each pearl, and estimate the value of each pearl.

Q. You mean at so much per base?

A. At so much per base, that is the usual way.

Q. You say that looking at these pearls from that point of view, that they were of different values?

A. Yes, sir.

Q. You mean different values, different base values?

A. Yes, sir.

Q. Now, when you have taken a lot of pearls and arrived at their value in the way that you stated, will you state whether the value of the collection of the pearls is any different from that of the values of the individual pearls which compose the lot added together.

A. The value of the number is no greater than the individual values added together.

Q. If such an assemblage of pearls as these 37 had been sold separately; that is to say, in lots of one, or three, or five, or whatever it may be, instead of selling the whole thirty-seven at once, would a better or a lower price be obtained for them?

A. Probably a higher price.

106 Q. State what is the effect upon the value of a pearl of drilling it.

A. The value, if anything, decreases through being drilled.

Q. Why?

A. Because their use is modified.

Q. Limited, you mean?

A. Limited.

Q. That is to say, when a pearl is drilled it may be applied to any use to which a pearl may be applied?

A. That is correct.

Q. But when a hole is drilled in it, then it can only be applied to certain uses. Is that right?

A. And many pearls decrease very much in value through being pierced through.

Q. What are the uses of drilled pearls?

A. You mean drilled through pearls?

Well, for necklaces, for lorgnettes, chains, fancy chains for brooches, for festoon brooches; in fact, they can be used for any purpose—but that is the uses most adapted to.

Q. What is the use they are most adapted to?

A. The jewelry I have just mentioned.

Q. Well, now, you saw the chain and the brooch that were shown here to Mr. Goodfriend and Mr. Citroen, and represented by this photograph [referring to Exhibit A]. You have not yet got a photograph of the others?

A. No, sir.

Q. Referring to the bracelet and the brooch that are represented on this photograph, marked Exhibit A, are they common and usual articles of jewelry?

A. Yes, sir.

Q. The large stones—5 of them—on the top of this brooch are pearls, are they?

107 A. Yes, sir.

Q. You saw the original?

A. Yes, sir.

Q. Are they drilled or undrilled pearls?

A. They are drilled through.

Q. And on the bracelet, the small round stones midway between the largest stones, are they pearls?

A. Yes, sir.

Q. Were they drilled pearls?

A. Drilled through pearls.

Q. I have asked you, Mr. Kauffmann, whether it is usual or unusual in handling a lot of pearls of a very high aggregate value for two or three or more dealers in precious stones to combine in purchasing and reselling the lot as a sort of syndicate combination?

A. Certainly that is usual.

Q. That is a common feature of the business?

A. It is nothing unusual.

Q. Each one advancing so much of the capital to buy them, and receiving a proportionate share of the profits on the same, is that right?

A. Yes, sir.

Q. For example, Mr. Kauffmann, when valuable jewelry is sold at auction in Paris, is it common or uncommon for a number of gentlemen to unite and finance the transaction?

A. It is common.

By Gen. Appr. SHARRETTS:

Q. Mr. Kauffmann, do you know whether is is unusual for private individuals at times to take out a pearl from a necklace and sell it to a dealer without regard to the jewelry to which it is attached?

A. There is nothing unusual about that.

108 Q. Now, as a matter of fact, Mr. Kauffmann, is it customary for pearls to be purchased already drilled that have been drilled not for the purpose of setting them as jewelry, pearls that have not been specially drilled, are they regular articles of trade and commerce?

A. They are regular articles of trade and commerce.

Q. Are such pearls as that frequently sold by one jeweler to another jeweler, probably three or four or half a dozen times before they are finally completed into jewelry?

A. Yes, sir.

Q. Would it be possible for you to tell whether a pearl that was drilled had ever been assembled in jewelry or not?

A. No, sir; excepting there was a mark there; well, even then it would not be possible.

By Mr. SMITH:

Q. If you had, for instance, this lot of 37 pearls, and found them to be drilled, and looked at them, could you tell whether they had ever been strung as an article of jewelry by looking at them?

A. No, sir.

Q. Is it usual for drilled pearls to change hands by purchase and sale frequently for speculative purposes or otherwise before they are strung or set as jewelry?

A. Yes, sir.

Q. When you see a lot of pearls such as these 37 that you say you saw, and had arrived at their value in the way you have said by taking the value of the individual pearls, would you add anything
109 in making an offer to purchase because the lot was adapted for use in a necklace?

A. No, sir.

Q. If a man has a pearl for which he has paid a certain price, and by looking around he finds another pearl which he thinks would match up with the first one, will he necessarily pay the same price for the second one that he had for the first?

A. Not necessarily at all. He might pay less.

Q. He might pay less—he might have to pay more.

A. He might have to pay more, certainly.

Q. Would the ability of any jeweler to sell certain pearls and match them up, or arrange them for a necklace, we will say, depend largely upon the volume of his business and the size of the assortment of pearls that he had in stock?

A. Decidedly.

Q. So that a man that had a very large stock could make up such a collection readily, while a man with a small stock would be unable to do so?

A. Certainly; question of supply.

Q. Mr. Kauffmann, are you familiar with diamond necklaces?

A. Yes, sir.

Q. If you had a diamond necklace——

Mr. KEMP. I object.

Q. If you had a diamond necklace and took the diamonds off the string——

A. The settings?

Q. If you had a diamond necklace and took the diamonds out of the necklace, would those diamonds after they had been taken out be anything more than so many diamonds?

110 Mr. KEMP. I object—absolutely immaterial. There can not be any doubt about it. Nothing to base such question on here.

(Objection sustained.)

Cross-examination of Nathan Kauffman by Mr. KEMP:

Q. What interest have you in this matter?

A. I am interested in this.

Q. What interest have you?

A. I have put up part of the purchase money.

Q. How large a part?

Mr. SMITH. That I object to. It is irrelevant.

Q. Substantial interest have you in it?

A. Yes, sir.

Q. How long have you had a substantial interest in these thirty-seven pearls?

A. Since the purchase of the pearls.

Q. How long was that?

A. Three or four years.

Q. Five or six years?
A. Three or four years, I think.
Q. More than that?
A. About three to four years.
Q. And of whom did you make your purchase of this interest?
A. I took an interest in it when Mr. Citroen——
Q. You took an interest in it when Mr. Citroen took?
A. Yes, sir.
111 Q. You are a part of the syndicate in these pearls?
A. Yes, sir.
Q. And you heard Mr. Citroen as to the manner of the party from whom the purchase was originally made, is that correct?
A. Yes, sir; the party from whom it was bought; yes, sir.
Q. And they were a collection of 37 pearls at the time the purchase was made?
A. No; there were forty-three pearls.
Q. Now that means that is more than the 37, doesn't it?
A. Yes, sir.
Q. And those forty-three were of what size?
A. I don't remember exactly. They were over a thousand grains.
Q. The six pearls?
A. No; the forty-three were over a thousand.
Q. I am asking you about the six—of what size were the six?
A. I cannot remember.
Q. As near as you can?
A. I guess they were between 8 and 15 grains.
Q. So they were the smallest were they not of the forty-three?
A. I don't know that either.
Q. You wouldn't say they were not?
A. No.
Q. When did you take out these six from the forty-three?
A. I never handled them.
Q. When was it done, if you know?
A. I don't know.
Q. You were in Paris at the time this deal was made, were you?
112 A. Part of the time; I was traveling.
Q. What part of the time?
A. I don't know.
Q. Did you see Mr. Leeds there?
A. Never.
Q. Were you consulted by Mr. Citroen about this sale?
A. No, sir.
Q. Did you know about the sale at the time it was going on?
A. I knew something was going on; yes, sir.
Q. Well, how did you know something was going on?
A. Mr. Citroen told me in a general way.
Q. In a general way Mr. Citroen told you?
A. Yes, sir.

Q. Well, now tell us what he said to you in a general way about them?

A. He told me he had a chance to sell these pearls in New York. That is to say, that he was to import them and make a sale here of them. That he has a customer for them.

Q. At a price?

A. Well, he was to make a price.

Q. When was he to make this price?

A. At the time these negotiations went on.

Q. Was this price to be made before they came here?

A. Yes.

Q. Did you know the price at which it was made before they came here?

A. No.

Q. Where were you at the time they were sent over here?

A. I don't know whether I was in Paris or not.

113 Q. Assuming that they came over about the 1st of June, 1906, were you in Paris at or about the 1st of June, 1906?

A. The chances are I was.

Q. And are the chances that you had been there some time before the 1st of June?

A. I was going away off and on. I would not swear that I was there all the time.

Q. In whose possession were these 37 or 43 pearls from the time you made your purchase until they were sent over here for delivery?

A. Most of the time in the possession of Mr. Citroen.

Q. In Mr. Citroen's place of business in Paris?

A. Yes, sir.

Q. Did you ever have them in your place of business?

A. No, sir.

Q. You have a place of business there, I take it?

A. I have an office there.

Q. You have an office, and does Mr. Citroen have more than an office there?

A. He has several offices—well, no; a suite of rooms.

Q. Just as you had here in the city?

A. Yes, sir.

Q. And you set up in business?

A. Yes, sir.

Q. And you dicker amongst yourselves and with the public generally?

A. Yes, sir.

Q. And sell to each other, and if a man wants a good pearl that you have you sell it to him?

A. Yes, sir.

Q. And if a stranger comes in?

114 A. We don't sell to strangers.

Q. If he has got the money?

A. No, sir; I wouldn't sell to a stranger. In New York I refused once to sell to a stranger and saved money.

Q. Well, now, tell me generally in as short a way as you can, what methods you make use of as a dealer in disposing of pearls, principally with reference to the selling of a pearl necklace; tell us just what you do, your ordinary proceeding?

A. Well, we give them out to brokers; we give the strings out to brokers who show them to dealers and to retail jewelers, and then if——

Q. At a price, do you name a price when you give them out?

A. Yes, sir.

Q. Do you not give him a memorandum of the prices?

A. Yes, sir; we give prices.

Q. With a memorandum?

A. No.

Q. You give him the price, generally?

A. Yes.

Q. Can you tell me whether you had a greater interest in this collection of jewels or pearls than Mr. Citroen had?

A. I had a smaller interest.

Q. You don't mean to tell me that you were not fully advised, having an interest that you did have, as to what Mr. Citroen was doing in the sale of these pearls, do you?

A. Fully?

Q. Yes, sir.

A. I was generally advised. I did not pay much attention to it. I had absolute confidence in Mr. Citroen. I didn't question his judgment.

115 Q. And you did not know anything about price, the conditions of the price that was made to Mr. Leeds, or Mr. Cartier, or anybody else?

A. No. I know nothing about Mr. Leeds' connection with the thing.

Q. Do you know anything about Cartier's connection with it?

A. I know in a general way that Mr. Cartier made a price, that he would sell them the goods in New York at a certain price; and the figure included 10 per cent duty. That is all I know, and all I cared for was the share of profit I would get out of it. Mr. Citroen had the absolute handling of these pearls.

Q. How long had you known Mr. Citroen?

A. Twenty-five years.

Q. Did you ever see these pearls on a string, thirty-seven pearls?

A. Yes, sir.

Q. When was that?

A. In Paris, in Mr. Citroen's office.

Q. When they were on that string, were they graduated as to size?

A. Fairly.

Q. As to colors?

A. Colors.

Q. I mean of those that were there?

A. No.

Q. Of the thirty-seven, you say they were not graduated as to color?

A. No, sir.

Q. Could they have been better graduated as to color, the thirty-seven?

A. Surely, decidedly, they could have been better graduated as to color and as to quality.

Q. You are speaking of the thirty-seven?

116 A. Yes, I speak of the thirty-seven.

Q. Then Mr. Citroen's graduation of them, so far as color is concerned, in his office, was not the best graduation according to your judgment that could have been made?

A. I suppose it was the best graduation that could be made out of the thirty-seven pearls. You mean to ask me whether they could have been graduated better?

Q. The thirty-seven pearls?

A. Yes.

Q. Now, then, you say that Mr. Citroen's graduation of the 37 pearls was not as good graduation as could have been made?

A. With these pearls I suppose they could not be made a better graduation.

Q. I am talking about these pearls?

A. No better graduation could have been made. I didn't look at them so closely.

Q. Then you took the graduation of the 37 pearls as you saw them in Mr. Citroen's office on the string was as good graduation as could have been made of them?

A. I suppose so.

Q. In so far as size is concerned?

A. Yes, sir.

Q. So far as color is concerned?

A. The color is independent. I cannot answer the question except according to facts. Now we cannot match pearls in size and in color at the same time. He might have a pearl of 10 grains that matches with a pearl of 20 grains in color that does not match in size. Therefore I cannot answer the question in that way. He matched them as well as he could.

117 Q. Both as to size, color, and quality; all of them?

A. No, sir; only as to size. It is impossible, what you ask me.

Q. I don't see the impossibility of it myself. I am talking of the individual thirty-seven pearls for the purpose of making a string of pearls, or a necklace, if you see fit. I want to know, as you saw them there, whether they could have been better graduated than they were in any other way?

A. That I don't know. Yes; it could be graduated a little better, too; it was nothing perfect.

Q. And when you saw them there were they graduated in a manner similar to a graduation which would be made on a pearl necklace?

A. Yes, sir.

Q. And when you speak of graduation, do you mean the size, color, and the quality, as well as all of them?

A. I mean only size.

Q. Well, now, take the color; were these 37 pearls graduated, so far as color is concerned, in a manner similar to a graduation which would be made for the purpose of making a pearl necklace?

A. Well, they could have been matched better in color.

Q. Could they have been matched better in quality?

A. Decidedly.

Q. Will you tell me, as an expert, what is the principal feature of the graduation of a pearl necklace—what do you first determine for the purpose of graduation?

A. Well, for the purpose of graduation, the size.

Q. For the purpose of forming a pearl necklace, what do you first do?

118 A. Well, I look at quality. You have to look at the quality. Then color and size at the same time. You cannot take one.

Q. You have to take them altogether as a lot, and first thinking of the size, I take it?

A. Yes.

Q. Second, the color, or does that come second?

A. I didn't say that. It may come hand in hand. These things go hand in hand. The size, color, skin, quality all goes hand in hand. The size alone is not sufficient; quality alone is not sufficient, and color alone is not sufficient.

Q. But take all these together, you would first have to regard the size of the pearl in order to make a pearl necklace?

A. I should not think so.

Q. You mean to say that you could start off with a large pearl, for instance, and then put a smaller one to it, and then a larger one?

A. I would not string them that way. I would first look at the quality and see whether they would come out with the sizes.

Q. And if your size is suitable and the quality is suitable, then you make a start in forming a necklace?

A. Yes, sir.

Q. Then the next thing is color?

A. The color goes with it.

Q. Now, in those 37 pearls as they were there by Citroen, as Citroen had them, had they gone through any process of selection that you had spoken of as to their size, their color, and their quality in the same way that you would do if you were making up a pearl necklace?

119 A. I cannot say. When I saw them there were these pearls, these 43 pearls, and then these 37 he put together as well as he could with the material he had on hand. If you ask me whether it was a perfect thing, I would say no.

(Examination of this witness temporarily suspended.)

ALFRED H. SMITH, a witness, called on behalf of the importers, having been duly sworn, testified as follows:

By Mr. SMITH:

Q. Mr. Smith, what is your business?

A. Importing and dealing in pearls and all kinds of really precious stones.

Q. How long have you been in that business?

A. For myself, you mean?

Q. Yes.

A. Since 1863.

Q. And is the business that you have a business that your father had before you?

A. No; not my father, the same name.

Q. Well, you personally have been in this business since 1863?

A. Yes.

Q. Where is your place of business?

A. Well, sort of transition state from 170 Broad to 475 Fifth avenue.

Q. You have been downtown, corner of Broadway and Maiden lane, and you are moving up to Fifth avenue?

A. Yes, sir.

120 Q. Have you been a large and extensive buyer and seller of pearls and precious stones?

A. I think so.

Q. Do you know Mr. Hugo Citroen, of Paris?

A. I do.

Q. How long have you known him, approximately?

A. I should say 15 years.

Q. And have had business transactions with him, have you?

A. Oh, yes.

Q. Now, Mr. Smith, we are making certain inquiries here concerning a lot of 37 pearls that were brought over here by Mr. Bernhard Citroen, and which he has testified were shown to you in Paris. Do you recollect that matter?

A. I do.

Q. You saw a collection of pearls at Citroen's establishment?

A. Yes.

Q. Are those pearls that you saw, were they of the same size or different sizes?

A. Of different sizes, graduated.

Q. Were they of the same quality or different qualities?

A. Well, they were certainly different qualities. They could not be precisely the same in that size.

Q. Did you examine those pearls with a view to making an offer for them, or any of them?

A. Well, I won't say that I considered the absolute purchase myself of the pearls, but I was much interested in pearls, as I had customers

that I felt might be interested in them. It never got so far as negotiating for them with me.

Q. Now, these pearls were pierced pearls, drilled pearls, were they not?

121 A. Yes.

Q. Will you state, Mr. Smith, whether the value of a pearl is increased or decreased by drilling it?

A. It is decreased.

Q. Why is that?

A. Because it always can be drilled, and perfection of the pearl cannot entirely be restored.

Q. In other words, drilling limits the uses to which the article may be put?

A. It does.

Q. Are you familiar with the uses of drilled pearls?

A. I think, surely.

Q. Will you state what they are?

A. Well, for the moment I do not think of any that are used excepting to be strung.

Q. That is to say, they may be strung as a necklace, may they?

A. Yes.

Q. Now, may they be used in other ways—have you ever seen, for instance, drilled pearls on chains?

A. On chains, surely.

Q. Separating the links of the chain?

A. Surely.

Q. Have you seen them occasionally on brooches?

A. I have seen them occasionally on brooches.

Q. Will you look at the photograph that I show you, marked "Exhibit A," at the brooch there. It has been testified here that the pearls in that brooch, the five pearls, were drilled pearls. Is that a not unusual use of drilled pearls?

A. Well, these are pear-shaped pearls, are they?

Q. Yes.

A. Partly pear-shaped, aren't they?

Q. Yes.

A. Well, we have used them this way ourselves.

122 Q. Below there, do you see a picture of a bracelet with some drilled pearls on it?

A. Yes.

Q. Is that anything unusual in the way of an article of jewelry?

A. No, I think not. Nothing at all.

Q. Now, Mr. Smith, when you look at a lot of pearls with a view to buying them, how do you arrive at their value?

A. Well, by estimating the individual pearls.

Q. That is to say, you take the individual pearls and determine what their value is?

A. Yes.

Q. And then by adding together the aggregate value, or adding together the values, you arrive at the aggregate value of the lot?

A. Yes, sir.

Q. Taking these 37 pearls that are here in question, if you had arrived at the value of the individual pearls in the manner you describe, would you add anything to that value because there was a collection of thirty-seven of them?

A. I think not.

Q. As to the quality of those 37 pearls that you saw, did they differ in quality?

A. Oh, surely.

Q. Did you, at the time you saw these pearls over there, did you see 37 or more than 37?

A. Well, I think that I saw them in two or three different aggregations. My memory is that the pearls that I saw ran from 37 to 43 or 44 pearls. I have a memorandum somewhere in my book. It will take me a long while to hunt that up.

Q. When was it that you saw these pearls, Mr. Smith?

A. Well, I cannot fix the exact date.

123 Q. Approximately?

A. I cannot recollect the time—whether my trip was two years ago—these were sold a year ago, I think, were they not?

Q. Yes; was it that year, or year before?

A. I may have seen them three years ago, seeing that you had them a year or more. It seems to me I saw them on two trips. But I know it was either two or three years ago, I should judge.

Q. Now, Mr. Smith——

A. I certainly saw them two years ago because they were not sold at that time, were they? Then I saw them certainly two years ago.

Q. Now, Mr. Smith, I will ask you, as a dealer and expert in this business, whether or not it is usual for a dealer having a valuable collection of pearls such as this, in showing them to purchasers, whether trade purchasers or wealthy individuals who can afford to buy articles of that character, to put them temporarily on a string for the purpose of exhibiting them to advantage.

A. Oh, yes.

Q. That is not unusual, is it?

A. No; that is the regular course.

Q. And in case the person with whom the transaction was made, the transaction was in question, was either a dealer of repute or a wealthly person of assured social standing, would there be anything unusual in letting them take them away in that condition and perhaps wear them for the purpose of showing them to their friends?

A. Well, we have frequently left expensive necklaces with our customers in that way. We did not restrict them that they should not wear it.

Q. You mean before the purchase?

A. Before the purchase.

124 Q. While the negotiations were in progress?

A. Yes. Of course it was not expected that they would show them to a lot of dealers.

Q. Now, let me ask you this. Is it a common thing in your business for a dealer to pick a few pearls here and there from various dealers that he knows, and with whom he has been in the habit of doing business, and make an aggregation or collection himself with a view to procuring a purchaser for that collection if he can?

A. That is frequently done.

Q. And is it common in such a case, in case the man who has done that has been unable to find a purchaser at a price that suits him, to return the various lots to the parties from whom he had obtained them?

A. Yes.

Q. If you look at a lot of drilled pearls such as these 37 pearls, could you tell by looking at them, and without further investigation and information, that they had ever been strung as necklace?

A. No, I could not. You mean to say loose in paper?

Q. Yes; I mean if you found them loose in paper, there would be nothing about them by which you could determine whether they had ever been strung?

A. No, not at all.

Cross-examination of Alfred H. Smith, by Mr. KEMP:

Q. Is it your practice to go to Paris substantially each year for the purpose of purchasing jewelry or pearls?

125 A. It has been; nearly every year some one from our firm, and I have generally done it.

Q. And you say that you think that on two occasions you saw these 37 pearls, or 43 pearls?

A. Yes; I think so; at intervals, of course. Not a specified trip; I saw them; I am familiar with it.

Q. On two different trips?

A. Yes; on two different trips. I think I saw them at intervals of a year. I won't say always 37 pearls as I knew them.

Q. You say you knew them, and how long had you known them; how many years?

A. Well, that might be a year or two more than that, possibly.

Q. And where were they, did you know, before Mr. Citroen had them?

A. Well, I don't know that I ever mentioned that to Mr. Citroen. Am I obligated to say that?

Q. If that is a fair question, Mr. Smith?

A. Well, of course, Mr. Citroen had to buy them from somebody, but I recognized some of the pearls, as I frequently do. There are pearls in this market that I have known for years.

Q. When you first saw, at Citroen's, these 43 or 37 pearls, you recognized them as having seen them before?

A. Yes; I would not say every pearl, but in the main.

Q. In the main, as a general lot of them?

A. Yes.

Q. Now, have you any confidential reasons for not telling where you saw these before Mr. Citreon had them?

A. No; except that, of course, the trade generally——

126 General Appraiser SHARRETTS. We understand your position; you don't care about making a statement.

(Question withdrawn by Mr. Kemp.)

Q. Were they in the same condition when you saw them first at Citroen's as they were when you had previously seen them?

A. Couldn't say. If you will let me mention the position without mentioning any names I will do it. The point is this, that I did not know to this day that Mr. Citroen did not own the pearls or was largely interested in them at the time when I first saw them, which was with another party.

Q. Could you, I say?

A. That is the point. I might have thought he did not own them at that time, but I have not any positive assurance.

Q. Now, then, getting back to what I asked you before, has the condition of these pearls changed in any material aspect from the time you first saw them at Mr. Citroen's?

A. I don't think there was in the course of a year any great difference. There may have been two or three pearls, more or less, or another pearl put in to improve the necklace.

Q. But so far as I understand it, they were in substantially the same shape?

A. Substantially the same.

Q. And were they matched as to size and color generally when you saw them first with Mr. Citroen?

A. Fairly well, of course, for such large pearls; not like a string of small pearls.

Q. Considering the large size of the pearls, you think they were fairly well matched?

127 A. Fairly well matched, but still not perfectly matched.

Q. I don't suppose, as to perfectly matching such large pearls; at least it would be extremely hard?

A. It would only be in a long time. We have one or two necklaces, sold the last several years.

Q. There is such a thing as working fifty years for a completed necklace?

A. I don't think there is such a thing as perfectly completed.

Q. If a person found a handsome pearl which he thought would be fitting to a necklace he would buy it?

A. Yes.

Q. And if he got a better and larger one he would add the larger one in place of another?

A. Yes, they are changing; necklaces are.

Q. But in the main, as I take it, from what you say, this aggregation of pearls continued as long as Mr. Citroen had them in substantially the same condition; I mean as to the number and as to the matching.

A. Well, I think there was some little change, perhaps; maybe to reduce the weight, two or three pearls taken off and others put on.

Q. Now, did you take sufficient interest in the collection to note the weight of any of them?

A. Yes; I did. I have a full memorandum somewhere. I have a very distinct idea in my mind of the weight of the large ones.

Q. Could you say or recollect as to whether this weight was given with reference to each pearl or a collection of half a dozen, we will say, in one aggregation and others in another? In other words,

128 I want to ask this: It appears from the invoice that these pearls were separated in five packages, one large one, six smaller, eight still smaller, ten still smaller, and twelve still smaller. Now, would you think that that was substantially the manner in which you took the sizes of them when you took your memorandum?

A. I could not say that that would be the natural graduation; I think about like that, somewheres like that.

Q. And you would naturally think that that was probably what you would have got?

A. No; I would not have.

Q. I mean as to your memorandum, not as to the pearls?

A. Well, yes. You see it would not be an uncommon thing if I objected to two or three pearls that he had in the necklace, and if I thought I had something better I would slip them in and try to sell my own.

Q. That is, I take it, the dealers usually do that and thereby try to improve the value of the article, and therefore get a better price?

A. Yes; sometimes they may cheapen it.

Q. Do you know whether that was ever done with this particular necklace?

A. Where I did with that particular necklace?

Q. Whether it was done?

A. That I don't know. I know I showed other pearls for a necklace, you know, that I thought might go in; pearls that I had.

Q. That is to say, that you had in your possession?

A. I had in my possession.

Q. On this side of the water?

A. No, in Paris.

129 Q. Do you have a house in Paris?

A. We have a house in London.

Q. Did you have it in London?

A. I don't know as to that, whether the necklace was ever sent to us in London.

Q. But did you have it in Paris?

A. Yes.

Q. On both occasions you speak of having been over there?

A. I am not sure of that.

Q. Did you put in other pearls that you had?

A. I don't think I put anything in; of course it might be shown with it.

Q. Now, in making up a necklace, you, as an expert, would be able to tell me about what would be the first thing that you would do. Suppose you have these 37 pearls, or any other 37 pearls, or any other aggregation of pearls, in what way would you make your first selection? The largest you had and then match up to that, or the smallest you had and match to that, or how would you do?

A. Well, you see, I would not start to make a necklace like that for stock. It would generally be with some customer for a starting point, as for instance, there is a necklace in this town where we commenced with twenty-five thousand dollars and it is going up to five hundred thousand dollars.

Q. And is that the usual method of forming a necklace?

A. No; I don't think that it is. But if I had the pearls that I know would go into a certain necklace, I would show it to the parties, and say here is a desirable thing to go into your necklace. So these necklaces are generally a matter of growth.

130 Q. Now, would you say as a dealer, from your experience as a dealer, that these 37, this aggregation of pearls, was a large necklace?

A. Oh, surely.

Q. No doubt about that?

A. No doubt that it was a large necklace.

Q. And would you say that it had been a necklace, considerable time had been spent in getting it together in its then condition, when you saw it?

A. I couldn't say. I couldn't decide that question, because it is possible to make up in London to-day or in Paris a large necklace.

Q. So that the size would not indicate that there had been any great length of time to make it?

A. No; I don't think. I might surmise that those came from some source, but I would not take it for granted, because necklaces are always made from large pearls by different dealers and then destroyed if not sold, the collection of pearls or the necklace.

Q. Were these pearls fairly well graduated as to size?

A. I think they were fairly well graduated, yes.

Q. In every way, you might say, color, size, and quality?

A. Well, they were not extremely well matched in the matter of luster and color. As far as graduation, as I remember, it was very good.

Q. And taking it all in all it was a collection of pearls, wasn't it, that would be suitable for a pearl necklace?

A. I think so.

Q. And it would be commercially so regarded as suitable of what would be commonly known as an article of jewelry for necklace?

A. Yes.

Q. That is right, isn't it?

131 A. Yes; the collection of pearls adapted for a pearl necklace.

Q. Yes; adapted for pearl necklace?

A. Oh, yes.

Q. Do you have any idea as to the amount of drilled pearls in the market as against the undrilled ones; what percentage would you say?

A. Of whole pearls?

Q. Yes.

A. Well, that would depend on size, in small pearls, in large pearls.

Q. Large pearls particularly?

A. In large pearls particularly I think most that you would find would be drilled.

Q. Well, Mr. Citroen testified that he thought 35 per cent of the trade were drilled pearls—would that be a large percentage?

A. Well, I should say that 85 to 90 would be drilled.

Q. And those are drilled, I take it, by the Orientals, or at least by the men who buy them before they are put on the market?

A. Well, I don't think they are, not drilled first. I don't see what the object would be to drill them first; it might damage the value.

Q. Isn't it a fact that the Orientals are skilful in drilling pearls for the best results in obtaining drilled pearls? Isn't that a fact?

A. I think the Orientals have been very unfortunate at times. They have put a couple of holes in them, peculiar ways of drilling.

Q. Do you think that is so regarded in the trade?

A. I think so.

Q. Isn't it a fact that the East Indian, or the man that finds
132 the pearls, or the man that he deals with, starts in and drills out the imperfections for the purpose of putting it in the market?

A. I don't know that; anything he could drill out we can drill out.

Q. Yes; but wouldn't it be more marketable if the imperfections were all drilled out and shown to you or a possible purchaser in completed condition?

A. It would not make a particle of difference to me, because I know I could drill out their imperfections.

Q. If that imperfection happened to be——

A. If it happens to lay right.

Q. But if you had an undrilled pearl you would see if there were imperfections in it to see if that could be drilled out?

A. Yes; if there were imperfections it would be more valuable if the drilling could go through it.

Q. Assuming that this pearl necklace was worth $360,000, do you know of any situation or condition in which these 37 pearls could have been put as an article of jewelry that would have increased that value, other than to be made as a necklace?

Mr. SMITH. I object. That is a hypothetical question not predicated on any evidence in the case.

(Objection overruled.)

A. To answer that question intelligently, so far as I am concerned, I would have to go a little bit into detail. I couldn't say yes or no, because it would give a wrong idea.

Q. Well, state it in your own way, Mr. Smith.

133 By Gen. Appr. McCLELLAND:

Q. Is there any other purpose that the 37 pearls could have been put to to make it more valuable than to make a necklace?

A. Assuredly so, if a favorable opportunity came for them in some other form. For instance, here is a necklace for $360,000, which I remember was the price of that necklace. Now, if a party came along to me and said, "Here, I only want to spend $250,000 for a necklace," I might take that necklace, and say, "Well, I will buy that collection from Mr. Citroen for 360,000, because I feel as an entire collection I can do better with them than I could if split up, and I could sell a necklace to them for $200,000. It depends a great deal on the opportunity that is offered to the dealer. But if you take the whole necklace of 37 pearls and you go to work and divide them up to put them into two or three necklaces, and put them in your show cases, adding small ones on the end of each, perhaps the dealer, Messrs. Tiffany & Co., or perhaps ourselves, in a similar way, would work more money out of it that way. But after splitting them up and adding those two or three pearls and putting them in a show case we would not wait a long time for a customer.

Q. And splitting them up in that way you would not get as much out of them than if they were together in the necklace?

A. Yes, you might. For instance, if I took half a dozen of the best pearls out of there, those that I felt were the best in brilliancy, and I took them and put them in some necklace with others that were not so good, I certainly would expect to come out more than I would on that necklace.

134 By Gen. Appr. SHARRETTS:

Q. When you say "necklace" you mean aggregation of pearls?

A. An aggregation of 37 pearls; to divide them as to qualities. When a man sells a whole collection of pearls for $360,000 he can work a great deal cheaper on that whole thing and clean out the whole lot than he can if he is to sell a part of them here and a part of them there. He wants a fuller price.

By Mr. KEMP:

Q. For the individual pearls?

A. For the individual pearls.

Q. And it takes him longer to sell them?

A. It is accidental.

Q. It is accidental to sell a pearl necklace? To sell a thing of that size to any one?

A. I think it is.

Q. Well, is it a fact or not that the aggregation of pearls known as a pearl necklace are known in trade as the most valuable articles of jewelry made of pearls, I mean?

A. You mean these large necklaces?

Q. Yes; large necklace like this 37?

A. Oh, yes. I think that is the most expensive, leading article of pearls.

Q. Composition?

A. Yes, pearl composition.

Q. And I suppose that it will be the effort of a dealer in pearls to so select and arrange an aggregation of pearls that they might be suitable to form a pearl necklace for exhibition and sell to a possible purchaser. Would that be true?

135 A. Yes; it is a pretty risky thing on so big a necklace.

Q. I suppose that you saw these in the graduated, matched, assorted condition that you have spoken of, over there in Citroen's?

A. I saw—do you mean before?

Q. Before it was sold to Leeds, or whoever bought it?

A. Oh, yes; I saw it on a string, that is, a thread ran through it; I don't remember whether it was a blue cord on it, or what it was.

Q. It was strung in necklace form?

A. Well, just as pearls come from India, strung that way with blue cords on.

Q. Were those pearls matched according to size on this string?

A. Oh, certainly, graduated.

Q. Now, speaking of the color of these respective pearls, the six that I presume you saw, did they match fairly well with the other number of pearls, other quantities of them in color: or have you said in a general way that they matched pretty well anyway?

A. I have an idea that the larger pearls were not as well matched, all of them, as they were down at the end.

Q. And would that be used with any aggregation of large pearls, or likely to be used with any aggregation of large pearls?

A. Well, I think that you would expect more differences in the center.

Q. The larger the pearls are the more difficult they are to exactly match them in all respects?

A. Yes, sir.

136 Q. So that taking the sizes of this 37 aggregation they were probably as well matched as you could match them under the circumstances?

A. No, I don't say that. Of course if I was to get up a very fine necklace——

Q. When you speak of very fine necklace, do you mean cost more than that?

A. I mean even less; if it was $150,000 necklace or a 50,000 necklace.

Q. Did you make an offer on them?

A. No, I did not.

Q. But you had them?

A. I took the value on them.

Q. You did make figures on them for customers?

A. Yes, I named the price of 1,800,000 francs, I think it was, to some one.

Q. To more than one?

A. No, I don't think so.

Q. But there was one particular party that you have in mind that you made that?

A. The party I showed had a fine string of pearls.

Q. Do you know whether or not this aggregation of pearls had ever been worn on the other side as a necklace?

A. I don't know; no, I am not familiar with it at all. I wasn't there at the time.

Q. You were not there at the time they were disposed of to Mr. Leeds?

A. No.

Q. But I take it that all the matching and all the graduation and all of the sizing of the pearls was done at the time you saw them, for these 37 pearls, in so far as was necessary that these 37 make a necklace; is that true?

A. I didn't go into that question at all.

137 Q. Well, judging from what you saw, would you think that was so?

A. I noticed that they did very well—well enough to enable me to show them.

Q. Was there any other matching of these large pearls—the 37—as they were there shown to you that you could have made which would have made the necklace or the aggregation more than the selection as it appeared to you?

A. Oh, if I had been at liberty to go out on the market?

Q. No; I am speaking of the 37.

A. Why, no; I couldn't say that they were arranged on that string as well as they could be arranged. They were arranged intelligently for those 37 pearls, but I have seen finer arrangements.

Q. But that would require other pearls?

A. Yes; it would require other pearls.

Q. And this was such an aggregation of 37 pearls as you commonly find in a necklace of the same size?

A. No; because I probably could not find another 37 that were just like that.

Q. I don't mean just like that; I mean similar selection, similar aggregation of pearls that would go into a necklace of that value or kind?

A. Well, I have seen finer.

Q. And I suppose that is true; we are speaking of this particular aggregation.

A. That was very good, certainly, but not perfect.

Q. You never saw a perfect one, did you?

A. No; I did not. I don't mean to say not as perfect as it could be, because the gentleman I was showing it to has a better one, only not so large.

138 Q. Now, you have told us, I take it, all of the experience you had with it in any way?

A. I don't know of anything else that would be of value to the Government in the matter.

Q. Were you in Paris last year?

A. No; last year I was not there.

Q. I take it that you did not make any deposit with Mr. Citroen at the time you had those pearls in your possession, did you?

A. Make a deposit of what?

Q. Of money?

A. He wouldn't ask me to do that.

Q. I don't mean any reflections on you. This deal was done a little different, that is all?

A. Yes.

Q. There was a deposit, for some reason or other?

A. Oh, no; there was just a memorandum, may be, the first time I took them to my hotel room to compare with my own pearls. I forgot how that was. It is a very common, ordinary practice for him to let me take it.

Q. A man by the name of Eknayan has been mentioned as having been the owner of these 37 pearls. Did you know anything about these pearls when he had them?

A. I did.

Q. And where were they at that time?

A. In his office.

Q. In Paris?

A. In Paris. I cannot say that the 37 pearls were identical, you understand, but they were very close.

Q. Similar?

A. Well, it was the same general selection; it would have varied a little.

139 Q. But in general terms it was the same?

A. Oh, yes.

Q. And how long before Mr. Citroen got them did you see them with this gentleman, Eknayan?

A. Well, possibly for a period of two or three weeks.

Q. Practically the same time, about the same time as Citroen got them?

A. About the same time.

Q. You never had any moneyed interest, I take it?

A. Never.

Q. It has been spoken of as having been bought by a syndicate—I take it you were not interested?

A. Oh, no; not interested in any way.

Q. In what condition were they when you saw them in Eknayan's possession?

A. I think in the same way.

Q. In the regular form of being put on a thread?

A. With a blue ribbon.

Q. You would think, would you, that these 37 pearls would produce an assemblage of pearls similar to what would be known as a pearl necklace, would you?

A. Oh, certainly, we would consider it as a pearl necklace or collection of pearls for necklace. My hesitancy in not mentioning Mr. Eknayan's name before was because I did not know that Mr. Citroen ever knew that I had seen them at Mr. Eknayan's.

Q. Now, do I understand you to say in response to Mr. Smith's question that it was not unusual to hand over to a possible purchaser a string of pearls that that purchaser possibly might wear them during the time that the deal is on?

140 A. Well, I don't know that I ever had a case where it was the understanding that they should wear them, but I have often sent up to a gentleman's house expensive strings of pearls and he had them for a day or two.

Q. Under those conditions they would be in shape ready to be worn, would they, with a string and clasp on them?

A. With a clasp, yes. I think that would be the usual thing, but I might send them on ribbons, and they hardly wear them that way.

Q. So, if these pearls were actually worn on the other side, the natural presumption would be that they must have been strung and clasps put on the string?

Mr. SMITH. I object to this witness being questioned about natural presumption. It is a purely hypothetical question.

Mr. KEMP. Oh, no; it is based on your direct examination.

General Appraiser SHARRETTS. The board rules if that is the custom of the trade he can answer; if that is a hypothetical question, we sustain the objection.

Q. Well, then, assuming that this necklace was worn on the other side in Paris, before it was brought over here, it would follow, would it not, that these pearls had actually been strung and fitted with clasps?

Mr. SMITH. I object to that on the ground that it is assuming a fact which has not been proven to exist.

141 By Gen. Appr. SHARRETTS:

Q. Is it the custom of the trade for them to send jewelry that way for inspection, Mr. Smith, and acceptance if they like them?

A. Yes.

Q. It is a trade practice?

A. Oh, yes.

Q. Is it a trade practice to send out completed jewelry or completed necklaces, or to send without the string?

A. Well, we should do either if the customer wanted.

Q. Well, then, you couldn't tell to your own knowledge whether it was strung permanently or whether it was on a temporary string?

A. Whether this necklace particularly?

Q. Yes?

A. No; I couldn't state that.

Q. In other words, there is no uniform practice on that?
(No answer.)
(Objection sustained.)

By Mr. KEMP:

Q. When pearls are assembled, graduated and matched, as these 37 pearls were, is it necessary to constitute them a necklace as known in the trade to have them fitted with clasps?

A. Well, there is a very nice point you have.

Q. In other words, would it be a completed necklace, matched and graduated as it was, as you saw it, without attaching the clasps?

142 Mr. SMITH. I object to that. That is a question for the board to rule upon, not for the witness to testify to.

General Appraiser SHARRETTS. He can testify within trade understanding whether it is necessary to make it a completed necklace.

A. I would say this, if I were showing a string of pearls without the snap on it, on a blue ribbon: I would say that is a beautiful necklace; I wouldn't take much account of the snap.

Q. You would regard it as a necklace independent of the snap?

A. I wouldn't regard it in a strict sense as a completed necklace.

Q. But you would show it to your customer as a necklace?

A. I would say it was a beautiful collection of pearls for a necklace. I don't know if I would use the word "necklace."

Q. You think you would say "that is a beautiful collection of pearls for a necklace?"

A. I should say so, yes. Are you talking about this special necklace?

Q. Any necklace.

A. I say it was, I believe, a collection of pearls for a necklace.

Q. And would you say with reference to these 37 pearls as you saw them that this was a costly beautiful collection of pearls for a necklace or suitable for a necklace?

A. Yes; I would use that expression. I wouldn't say it was the best in the world.

By Gen. Appr. SHARRETTS:

143 Q. Well, Mr. Smith, in the condition in which you saw these pearls, would they be known in the trade as jewelry or a collection of pearls?

A. I think as a collection of pearls.

Q. They would not be known as jewelry?

A. Would not be known as jewelry, I don't think.

By Mr. KEMP:

Q. What would have to be done with these pearls in order to make them an article of jewelry?

A. Well, there is such a nice little point in there that I don't exactly know how to answer this question. Of course, if you take that collection of pearls and arrange them individually in the order of a necklace and spend a thousand dollars in mounting, as is some-

times done, that would certainly be a piece of jewelry, but whether the tying of a snap on makes it a piece of jewelry——

Q. Now, you are a man who has been in this business since 1863?

A. Yes.

Q. Now, I am just trying to get your opinion as to what you say would be necessary to do to these 37 pearls in order to make it an article of jewelry.

A. I don't know; all I can say, I can illustrate if you want me.

Q. No; I am talking about that particularly.

A. I don't think that taking a $300,000 string of pearls—if you ask me—if you saw a $100,000 single pear-shaped pearl which I have handled a short time ago, a $100,000 pearl, and you take that pearl, it has got a hole through it, and you take and run a thread through it and attach that by tying to a little brooch worth fifteen dollars, or $150, and you tie that on there by putting the string through
144 it, that then that makes a piece of jewelry at 60 per cent—I can't see where that can be.

Q. And it wasn't a piece of jewelry before that?

A. No; the pearl itself was not a piece of jewelry.

Q. I am just asking you—I want you to say, if you will, what was necessary to be done to these 37 pearls, as you saw them at Citroen's, to make that an article of jewelry?

A. I think that the law must determine that question.

Q. No, commercially.

A. So far as the manufacturer's word is concerned?

Q. Commercially.

A. Well, commercially, if the 37 pearls or the 3 or 4 very expensive pear-shaped pearls were mounted up in gold as jewelry is, and becomes part of that piece of jewelry, which a string of pearls does not become part of, and I say that it is not set up as jewelry.

Q. I want you to tell me what was necessary to be done with those 37 pearls in the condition you saw them to constitute an article of jewelry for a necklace.

Mr. SMITH. I object to the question on the ground that it has been answered in half a dozen different forms.

Mr. KEMP. It never has been answered directly.

General Appraiser SHARRETTS. The board rules that the witness can answer the question within the trade understanding, the
145 trade meaning as to what would have been necessary to do to it to make it jewelry within the trade understanding.

A. I should say that it would be that each pearl individually should become a part of the piece of jewelry as being set, you know. If each pearl was set in an expensive piece of jewelry—if it had been possible to have taken these 37 pearls and made up a splendid stomacher, as is sometimes done——

By Gen. Appr. MCCLELLAND:

Q. Suppose, Mr. Smith, that these 37 pearls had been strung upon a gold chain with a clasp, would they then have been an article of jewelry; that is, the aggregation?

A. I don't think so.

Q. Would they have been so regarded in the jewelry trade, as an article of jewelry?

A. I think that the trade would look upon it in this way: The same ruling would hold to a thousand dollar snap as would hold to a ten dollar one. Now, this ten dollar snap on a string of pearls that were on a thread which would certainly not be a piece of jewely on the thread. The minute that they were tied on that ten dollar snap would they become a piece of jewelry and assessable at the enormous difference?

Q. It is not a question of what would follow; it is a question of what it is.

General Appraiser SHARRETTS. The question is this: If these 37 pearls had been permanently attached to a gold chain and to that gold chain is affixed a snap, would the trade regard it as an article of jewelry?

146 WITNESS. In other words, the stringing of pearls on the gold.

General Appraiser MCCLELLAND. Suppose they were strung in form with a clasp so as to be a completed necklace ready for wear, would the aggregation then be an article of jewelry in the trade?

WITNESS. Well, I would say that I am very much at sea. I cannot say yes or no on that. I don't know.

By Gen. Appr. SHARRETTS:

Q. At any time you saw these 37 pearls or the 43 pearls were they permanently strung?

A. I think you mean with a snap?

Q. Permanently strung so that they could be used?

A. I think not. I wouldn't say positively, but I am pretty confident that they were not, because I never took any memorandum, except 37 pearls, weighing so much.

Q. But under the law jewelry includes "pearls strung." Now, for tariff purposes, if it is permanently strung it is jewelry. You are asked whether you had ever seen them at any time permanently strung; your answer is, not?

A. I think not.

By Mr. KEMP:

Q. Do you say that in the trade it is necessary that it should have a snap in order to be permanently strung?

A. When I said permanently strung, I meant so that they
147 could be shown, so that they would not fall apart. That was my point; I don't mean never to be disturbed, because you can disturb them in a second.

Q. Could you disturb any set of pearls in a minute?

A. Why, certainly, by cutting the thread.

By Gen. Appr. MCCLELLAND:

Q. In your judgment were they simply temporarily strung for the purpose of showing?

A. Yes; I think so?

By Mr. KEMP:

Q. Do you know how they were strung?
A. Well, they were strung certainly on silk.
Q. Is that the usual way of stringing pearls?
A. The usual way of stringing.
Q. The usual way of stringing a permanent string of pearls is upon a silk cord?
A. Yes; both ways.
Q. So that if they were on some kind of a silk cord then they would have been intended for a permanent string?
A. Yes.
Q. And all the difference as to permanently stringing them, as far as making a permanent necklace, is that they did not have the clasp on; is that right?
A. Yes.
Q. And was that all the difference? Do you regard a string of pearls permanently strung with clasps an article of jewelry, or is that so understood in trade?

148 Mr. SMITH. I object to that as immaterial. The law determines what is an article of jewelry, and this witness' opinion on the subject is of no consequence.

(Objection sustained.)

Q. Were these strung on a silk cord, an assemblage of pearls similar to a permanently strung aggregation of pearls constituting a pearl necklace?

Mr. SMITH. Objected to as calling for witness' opinion in the matter.

WITNESS. I don't know what is a permanently strung string of pearls.

General Appraiser SHARRETTS. I would say it was strung on silk and whatever was necessary to complete them to be worn as a necklace.

WITNESS. I understand that, but still in two seconds it may be destroyed. I mean the sequence of the pearls; I don't see there is any permanence.

General Appraiser SHARRETTS. Well, at any time you saw them were these articles so strung as to be ready for permanent use?

WITNESS. I think so.

By Mr. KEMP:

Q. Were they so strung as to be similar to a collection of jewelry known as a necklace?

(Objected to by counsel for the importers on the ground that it is asking for this witness' opinion on the question of simi-
149 larity, which is the very question the board itself has to pass on.)

(Objection sustained.)

LUDWIG NISSEN, a witness called in behalf of the importer, having been duly sworn, testified as follows:

By Mr. SMITH:

Q. Mr. Nissen, what is your business?
A. Known as jewelry.
Q. How long have you been in that business?
A. 26 years.
Q. Have you been during that time extensively in precious stones?
A. I have been dealing in precious stones; yes, sir.
Q. And in pearls?
A. Yes, sir.
Q. How long have you been dealing in pearls?
A. Ever since I am in the jewelry business.
Q. You conduct your business in your own name, I understand?
A. Yes, sir.
Q. The name of your firm is Ludwig Nissen?
A. Ludwig Nissen & Co.
Q. And your place of business is on the corner of Broadway and John street?
A. Yes, sir.
Q. In the course of your business, do you make trips once a year to Amsterdam and Paris and other jewelry centers?
A. I go to Europe every summer.
Q. Do you know Mr. Hugo Citroen?
A. I do.
150 Q. How long have you known him?
A. I think I have known him about 20 years; I think he was in this country before I began to go to Europe.
Q. We have under consideration here an importation made by B. Citroen of 37 pearls, and Mr. Citroen has testified that these pearls were shown to you in Paris; do you recall that circumstance?
A. I have seen 37 pearls in their possession.
Q. Now, were these 37 pearls that you saw of the same size or different sizes?
A. Different sizes.
Q. Same or different qualities?
A. Different qualities.
Q. Same or different values?
A. Different values.
Q. Did you examine them?
A. I did.
Q. Were they drilled or undrilled?
A. They were drilled.
Q. As an expert, will you state whether the effect of drilling pearls is to increase or decrease their value?
A. Well, as a general thing, taking each pearl for itself, the value of each would be decreased by drilling.
Q. In that case it limits the uses to which the pearl may be put?
A. Yes, sir.

Q. You have been in the habit in your business of buying collections of pearls, have you?

A. Yes, sir.

Q. In doing so, how do you arrive at their value?

A. Well, you have to consider practically each individual
151 pearl as to its value, and then make up the aggregate from the consideration of the individual.

Q. That is to say, you take the values of the pearls separately and add them together, is that right?

A. Yes, sir.

Q. And when you have done that in the case of such a collection as these 37 pearls would you add anything to the aggregate amount that you had thus arrived at by reason of the fact that there was a collection of 37?

A. No, sir.

Q. Then the value of such an aggregation is no greater than the aggregate values of the individual pearls composing the collection?

A. No, sir.

Q. If the pearls composing this collection had been disposed of either individually or in small groups, one or two or three or five at a time, would the price realized in that way, in your opinion, be greater or less than the price to be obtained by selling it as a collection?

A. Well, that is hard to say; it might have been considerably greater. It is pretty hard to swear to anything that would happen.

Q. Suppose you had a lot of pearls exactly like the 37 that composed this collection except that they were not pierced, would you consider that they were worth more or less than this lot?

A. I would consider them worth more.

Q. Are drilled pearls used for any other purpose than for stringing necklaces?

A. Yes, sir.

Q. Mention such purposes.

152 A. They are used for festoon necklaces; they are used for scarf pins; they are used for almost any article of jewelry.

Q. Are these uses common?

A. Yes.

Q. Not at all unusual?

A. No.

Q. Look at this photograph that I show you of a brooch [Ex. A]; assuming the fact to be as shown here, that the pearls at the top of that brooch are drilled pearls, is such a use of them as in that brooch at all unusual?

A. No, sir.

Q. Referring to the bracelet which is shown on that photograph, assuming the fact that these little round objects there between the links of the chain are drilled pearls, as has been testified here, is that a usual use of such pearls?

A. Yes, sir.

Q. I show you here a collection of scarf pins with pearls [handing same to witness]. Are those pearls in those scarf pins drilled pearls?

A. They are.

Q. Is that a common and usual use of drilled pearls?

A. It is quite common; yes, sir.

Mr. SMITH. I propose to substitute hereafter a photograph of it.

The WITNESS. You see, the gold goes all the way through them in order to cover the hole.

Q. You spoke of a festoon necklace. Is this a festoon necklace [handing the article to witness]?

A. Yes, sir.

153 Q. And I notice that it has in each part three or four pearls. Are they drilled pearls?

A. Yes, sir.

Q. Is that a common use of drilled pearls?

A. Yes, sir.

Q. Such an article as this festoon necklace is a common article of jewelry, is it?

A. Yes, sir.

Mr. KEMP. I object to putting these in as exhibits.

Mr. SMITH. These are to illustrate the uses of these pearls.

(Objection overruled; the understanding being that photographs would be substituted for the actual samples.)

Mr. KEMP. The pearls here are pear-shaped pearls, nothing like these.

Mr. SMITH. I am willing to have that stated on the record that they are pear-shaped pearls.

Q. Now, I show you here a chain with pearls on it. Are those drilled pearls [handing same to witness]?

A. Yes, sir.

Q. Is that a common use of drilled pearls?

A. Yes, sir.

Q. Are these pearls pear-shaped pearls?

A. No.

Q. They are round pearls, are they?

A. Some of them are round, some of them a little bit off the round.

Q. Are they similar to pearls that would be used in a necklace?

A. There have been a great many pearls like that used in a necklace; yes.

154 Q. Are all pearls that are used in pearl necklaces round pearls?

A. No.

Q. Are pear-shaped pearls used in necklaces?

A. Yes, sir.

Q. Especially at the ends of a necklace?

A. Yes; sometimes you find them anywhere.

Q. Mr. Nissen, is it usual in your trade, when it is proposed to handle a collection of jewels of very great value, for three or four merchants to combine and take a joint interest in the transaction?

A. That is quite usual; yes.

Q. Each contributing a part of the purchase money and receiving a proportionate share of the profits of the deal?

A. Yes, sir.

Q. Is it usual in your trade in showing goods like pearls to put them on a string for purposes of display, in order that people may judge of their suitability for a necklace or any other article?

A. Yes, sir.

Q. That is not uncommon, is it?

A. No; that is the most common thing.

Q. Is it or is it not a common thing in your business for merchants to allow other merchants of standing and repute in the business to take valuable collections of jewels, pearls, or other jewels on memorandum, for the purpose of seeing if they could find a customer?

A. No, sir; that is quite usual.

Q. Is it common or uncommon in your business for a merchant to obtain a few pearls from perhaps half a dozen different dealers, with a view to offering them for sale as a collection to a purchaser if he can find one?

155 A. Very common.

Q. And is it usual in such cases, if he does not find a purchaser, to return the various lots of pearls to the persons from whom he obtained them?

A. It is not only usual, but almost perennial.

Q. Is it sometimes the case in your business that where a collection of pearls is being offered for sale to a purchaser not a dealer—to a wealthy woman, for instance—to allow her to take the articles and have them for a few days, and wear them if she pleases, subject to their being returned in case the sale was not consummated?

A. Quite usual.

Q. Mr. Nissen, when you look at a collection of pearls similar to this collection of 37, shown you in papers—one, three, five, ten in a paper—can you tell by looking at them whether they have ever been strung as a necklace?

A. No.

Cross-examination of Ludwig Nissen by Mr. KEMP:

Q. Do you say that it is quite usual in your business to deliver over to a prospective purchaser the article in question, an article of jewelry, for that person to keep for a few days, or a week, or ten days, as a matter of fact, for the purpose of determining whether or not they want to complete the purchase, and wear the article if they see fit to?

A. Yes, sir.

Q. And if Mrs. Leeds wore this aggregation of pearls in Paris, there would be nothing unusual about that?

A. No, sir.

156 Q. That would be simply doing what you say it is the custom here to do?

A. The custom here and over there.

Q. I understand you that you saw these pearls in Paris at one time?

A. Yes, sir.

Q. How long ago was that?

A. Well, I have seen them more than once.

Q. Begin at the beginning, the first time you saw them, Mr. Nissen, and tell us when and where that was, as near as you can?

A. Well, I think I saw them first about three years ago.

Q. And were they then in Citroen's possession, or whose?

A. Citroen's.

Q. Had you ever seen them in Eknayan's possession?

A. No, sir.

Q. Do you know this firm or name?

A. I know Eknayan personally very well.

Q. So that the first time you saw them they were in Citroen's possession?

A. Yes.

Q. About three years ago, you think?

A. It may have been four years ago. I am not quite sure.

Q. And have you seen them each year since that time, or do you go over there yearly?

A. I go over there yearly. I don't know whether I saw them each year since that time, but I saw them after the first time.

Q. Did you take any memorandum of them, as to the number and weights, and so on?

A. I did.

157 Q. When did you do that?

A. The first time I saw them.

Q. Did you get prices on them at that time, too?

A. Yes.

Q. How many of them were there at that time?

A. When I was there there were 43.

Q. That was the first time?

A. That is, I take from the testimony that there must have been 43. I do not personally recollect whether there were 43 or 45. My impression is that it was 45. Judging from what I have heard I came to the conclusion that I was mistaken and that it was only 43.

Q. Did you afterwards see them in a collection of 37?

A. I saw a collection of 37; yes, sir.

Q. And you judge from what you knew about them and saw of them that they were 37 pearls of the 43 you had seen?

A. Well, I saw them together. As a matter of fact, whether it was 43 or 45 I saw altogether on one string and afterwards separated, I do not know.

Q. And the 37 on one string?

A. I could not swear that it was 37; I imagine it was.

Q. You think it was in that neighborhood?

A. I think it was the same string.

Q. Did you have any recollection as to the size of the largest?

A. No positive recollection, except that I thought the largest something over 50 grains.

Q. And then were the next six groups practically of the same size?

A. No.

158 Q. Were they grouped to you in the memorandum that you took?

A. They were grouped as single pearls; they were not grouped. The memorandum that I took was for the individual pearls, the weights.

Q. Each one of the 37 pearls?

A. Each one of the pearls I had the weight of.

Q. Have you that weight yet?

A. I have been looking for it and haven't got it. At least I cannot find it.

Q. I take it that these 37 pearls were large, valuable pearls, were they not?

A. They were.

Q. And assuming that they were sold for $360,000, that would represent a large price for the pearls, would it not?

A. That would represent a large price for any number of pearls.

Q. And it would indicate that they were valuable pearls, would it not?

A. Yes, sir.

Q. As you saw them, were they fairly well graduated?

A. They were well graduated as to size, yes.

Q. In making a pearl necklace, is that one of the chief objects, in the graduation—determine to graduate them as to size?

A. That depends entirely upon the prospective purchaser or upon the man who holds them. Some people want them graduated very much. Some people want them graduated very little, and some people do not want them graduated at all.

Q. That depends upon the size of the pocketbook?

A. Well, I suppose it does, and upon the taste.

159 Q. I am speaking as to what are the features which go to make up a valuable pearl necklace similar to this we are talking about.

A. The features to make up a valuable pearl necklace, in my estimation, are that they should be well matched in color, particularly in texture and in perfection; as to graduation, I do not consider that a particular feature, because you will find there are many people that want very much graduation as you do find people that want very little graduation, and I know that there are a great many people who do not want any graduation. So that is entirely a matter of taste of the purchaser.

Q. For the purpose of assembling a given number of pearls, say 37, so far as the graduation is concerned, would it be the usual thing to start with the largest pearl of the aggregation, or how would you do that?

A. That is hard to say. Sometimes you get the largest pearl first, and sometimes you get the largest pearl last. Sometimes you buy pearls without any idea of making any necklace of them. You may intend to use them for any other purpose. Then when you happen to get a collection and make a necklace, of course you might do——

Q. Do I understand that individual pearls are more valuable than matched pearls?

A. No; I do not say that.

Q. Suppose you had a single pearl; say that it weighed 50 grains, and you were able to find another single pearl that weighed 50 grains, of similar texture, quality, and color, and thus make a pair of earrings, we will say, that would be matching the two, would it not?

A. Yes, sir.

160 Q. And would these two be regarded as more valuable by reason of this matching than they would have been considered singly?

A. I should consider those two were a little more valuable than individually.

Q. Just like you buy a pair of horses; if you had a fine horse and got another horse that would match, you would have a more valuable pair than if you had individual horses?

A. Yes.

Q. Now, continuing along that line; in the making up of a necklace, suppose you have 37 pearls that were graduated, either large or small, but selected carefully in the way of matching in color and quality, and you are able to show that there were 37 pearls in the necklace, do you know of any condition in which they would show to better advantage than in a necklace?

A. Not if anybody wanted a necklace; no.

Q. So that if anybody wanted these 37 pearls for a necklace, matched as they were, they would be more valuable in that condition than they would be in any other condition? I am assuming that they are matched; what do you say as to that?

A. No; not necessarily.

Q. Why not?

A. Because in making the price of a congregation or aggregation of pearls, just the same in selling as in buying, you consider the value of the individual pearl, and very frequently in selling a large aggregation of pearls in a necklace you would. And I can say from personal experience that I have sold them at very much lower prices than I would have taken for the individual pearl, because of the largeness of the transaction involved. For instance, if I can

161 sell a $100,000 of goods and make 5% I make $5,000; if I only sell $10,000, I can only make $500.

Q. Well, take the ordinary transactions in your trade, and, considering it from that standpoint, would you say that the trade in general would be able to make an aggregation of these 37 pearls in any other way than a necklace, out of which you could get more money?

A. Yes, sir.

Q. I mean in the ordinary course of trade, got rid of in the same length of time?

A. Whether we sell them in the same length of time? That is not a fair answer for me to make, because you cannot sell them in the same length of time individually that you can in one lump.

Q. Then in that case you are in a better position; it would be better to put them in a necklace and sell them in a necklace?

A. Yes.

Q. In other words, I did not understand you or the other witnesses who have testified in saying or swearing when you put a lot of drilled pearls into a necklace you have thereby depreciated their market value?

A. No.

Q. You did not say that?

A. No; I do not know that would have depreciated their market value by putting them in a necklace.

Q. Do you know the percentage of drilled pearls which come into the market as compared with the undrilled?

A. No; I don't.

Q. Would you say that 90 or 95% of the pearls in the market were drilled?

162 A. I would not care to say anything on that subject.

Q. You know it is a very high percentage?

A. I know it is a very large percentage.

Q. It is the usual way for pearls to come into the market, to be drilled?

A. The usual way for pearls originally to come into the market is undrilled, because nature produces them undrilled.

Q. But nature does not put them on the market; they are taken right out of the shell and put on the market?

A. Yes.

Q. That is the way you people get them?

A. We do not get them all; there are a great many pearls that have been used for other purposes.

Q. Would you say that Mr. Citroen's testimony that 95% of the pearls in trade were drilled pearls, would you say that it was incorrect?

A. I simply do not know; I never tried to get any statistics on that point.

Q. I take it, from what you say in reference to these pearls, that they were in a necklace form when you saw them over there?

A. They were on a string.

Q. That is the form of a necklace?

A. Not necessarily.

Q. Well, what is the form of a necklace? Is not that a form of a necklace?

A. Yes; it is in the form of a necklace when on a string.

Q. And these pearls were strung on what kind of a string?
163 A. Well, I should say, from what they are usually strung on, that they were on a silk string.
Q. And that is the way a necklace is usually strung, isn't it?
A. Yes.
Q. They were graduated on that string, were they not?
A. I think they were put on that string so as to show to their best advantage.
Q. And the best advantage would be in necklace form?
A. Not always; they are put on a string for convenience sake.
Q. Is there any other form in which you could string pearls for the purpose of selling as necklaces; any other form?
A. No, sir.
Q. And these were put in the shape as would make them most salable?
A. I did not say that.
Q. Will you say that?
A. No; because that depends entirely on the notion of the man that wants to sell them.
Q. But you saw them in that shape that they were to the best advantage?
A. I say I consider that they were to the best advantage.
Q. What would be necessary to put them in condition to the best advantage?
A. For instance, if I did not want to buy them, if they were not salable in my judgment, I do not want to buy them in that form.
Q. But they were sold in that form, as you understand it?
164 A. Yes.
Q. So that the purchaser wanted them in that form?
A. Evidently.
Q. In that form, as you say, they were shown to the best advantage, and that would be graduated and matched as far as possible as to size and color, would it not?
A. Graduated they were; as to their graduation, they were strung that way.
Q. And as to matching of size and color?
A. As to their matching of size and color, I have not had the opportunity of saying what I thought about that; and I might say now that in my judgment they were not matched at all; not matched to suit me, and for that reason I did not want to buy them.
Q. Well, they were matched in a way?
A. Well, you might take an apple and pear and say it is a couple and match them.
Q. But these were not diamonds and pearls?
A. No.
Q. All drilled pearls?
A. Yes.
Q. And all large size?
A. Yes.

Q. And they were an unusually large size for 37 pearls?

A. Yes; I think they were an unusually large collection for 37 pearls.

Q. Now, would you as a dealer yourself have matched these more particularly for color than for their size in making up the necklace? Would that have been your idea?

A. I should never have matched them for a necklace personally.

165 NEW YORK, *May 6, 1907.*

Continuation of hearing from May 2, 1907.

Appearances as before.

BERNARD CITROEN, recalled.

By Mr. KEMP:

Q. Mr. Citroen, you testified the other day that you entered these pearls yourself at the custom-house?

A. Yes, sir.

Q. Did you have a list with you or any memorandum indicating the separate values of these 37 pearls?

A. I had a copy of the consular invoice made in Paris.

Q. Did you have anything else indicating their values, separate values?

A. No; not that I remember.

Q. And where did you get this copy of the consular invoice, from whom?

A. My brother.

Q. Do you remember how this invoice was made out, as to whether the pearls were individually scheduled and their values put opposite to them or not?

A. They were exactly as I told you a few days ago—one pearl, six pearls, 8 pearls, 10 pearls, 12 pearls; each package was valued at a price.

Q. Can you give me the values of these separate packages?

166 Gen. Appr. SHARRETTS. Was the invoice filed with the collector?

Mr. SMITH. No, it is here; part of the record in the case.

Q. Do you have any recollection of the values that were put upon these pearls aside from the consular invoice?

A. Put on these pearls?

Q. Yes.

A. The price was put on the invoice.

Q. That price was how much in round numbers, $220,000?

A. Altogether?

Q. Yes.

A. It was $240,000 about.

Q. About how much did you say, $240,000?

Mr. SMITH. I object, on the ground that the invoice speaks for itself.

The WITNESS. It is 1,100,000 francs.
Q. What do you take out of that?
A. 4% for cash.
Q. Leaving a balance of what?
Gen. Appr. MCCLELLAND. What the invoice shows.
Q. 1,143,366 francs; is that correct?
A. Yes.
Q. Was that the aggregate value, or the separate values of the individual pearls?
A. I don't understand the question; that is the price of those pearls.
167 Q. Was that price made up of the individual values of each pearl?
A. Of the individual values of these different packages.
Q. Of the different packages?
A. Yes, sir.
Q. Have you any memoranda which shows the values of the six pearls separately?
A. No, sir.
Q. Nor of the eight pearls separately?
A. No, sir.
Q. Nor of the 10?
A. No, sir.
Q. Nor of the 12?
A. No, sir.
Q. The total amount, then, represents the individual values of the 5 packages?
A. Yes, sir.
Gen. Appr. MCCLELLAND. Did you have anything to do with fixing the values of those pearls at all, you personally?
The WITNESS. No, sir.
Q. Who did fix the values, if you know?
A. My brother.
Q. In your presence?
A. I don't remember.
Q. You don't remember whether you were with him or not?
A. No.
Q. Did you have any conversation with him about the values which were in the consular invoice?
A. Yes, sir.
168 Q. What was that conversation?
A. He told me the value at the time; I saw that they were absolutely correct.
Q. Are these the same values, or substantially the same values, which you from time to time had on these pearls when you took them upon memorandum to sell yourself?
A. I don't know if the pearls were ever taken in exactly the same condition.

Q. What do you say now as to whether it was a fact or not, as to whether you had those 37 pearls on memorandum from your brother for sale?

A. When they were given out on memorandum, of course the asking price was bigger than that price.

Q. What was the price that you would return to your brother; suppose you made the sale, what was that?

Mr. SMITH. I object to that as irrelevant.

The WITNESS. In which case?

Q. Assuming that you undertook to sell them?

A. If I would have made enough I would have made an offer to my brother.

Q. You never did make an offer to your brother?

A. No, sir.

Cross-examination of Ludwig Nissen continued.

By Mr. KEMP:

Q. Among the last questions I asked you the other day, Mr.
169 Nissen, was as to the color of these pearls and as to whether they matched in color or not, and your answer was: "I should never have matched them for a necklace personally." Now, what did you mean by that answer?

A. They did not match closely enough to suit me for a necklace.

Q. In what respect?

A. Because the color did not come near enough.

Q. State in a general way, or particularly, if you can, in what respect they differed in color?

A. Why, some of them were pink, some were white, some had a bluish tint, and you might say there were pearls in that lot that practically represented every color, in a mild form, that you will find in a rainbow.

Q. Is there any well-defined rule with reference to matching pearls, so far as the color is concerned, among dealers?

A. Yes.

Q. Will you state it, please?

A. Why, they ought to match in color.

Q. To what extent and how closely?

A. The closer the better.

Gen. Appr. SHARRETTS. You mean pink pearls together or white pearls together?

The WITNESS. Why, yes; that is what I mean. For instance, I can lay out necklaces of five or six different tints, so can other people that are in the wholesale business, and match up necklaces. But they will put the green ones on one string, and the pink ones on another, and the white ones on a third, and the blue ones on
170 a fourth, and so on; and I would not personally put different colors on one string and call them a necklace.

Q. Would that be somewhat dependent, however, upon the size of the pearls?

A. Yes.

Q. And it would be more particularly dependent, would it, if the pearls were of large sizes?

A. Yes.

Q. So that it might very well be that if you regarded the size of the pearls, as, for instance, these 37, that you would not be able to match them as closely in color, as you would if they were smaller in size; is that correct?

A. That would be very material.

Q. Was that the case, practically, with these 37 pearls?

A. Well, I don't know whether these people ever tried to match them any closer than that.

Q. You do know, however—I take it from what you testified—that they had been substantially in this condition as you saw them for several years?

A. I imagine they were in the same condition; I couldn't swear to that positively any further than what I was told about them, because I didn't have each individual record of each pearl, nor did I weigh them and look at them with any particular interest in trying to verify that they were the same lot of pearls.

Q. Is it a fact that it would be much easier to match, with respect to color, smaller sized pearls than these 37 pearls?

A. Yes, sir.

171 Q. And I take it, it would be a fact that some dealers might pay less attention to the matching so far as color was concerned than they would to size?

A. Yes.

Q. One of the features of this collection of pearls, from what you testified, was their size, wasn't it?

A. Yes, sir.

Q. Were they unusually large for that number together?

A. They were quite large; yes. It was considered a large necklace—large lot of pearls, rather. When I say necklace I say so in answer to the words that may be put in my mouth; I don't say that intentionally.

Q. I don't remember that I said it.

A. Neither do I, except that it has been spoken of here so much as a necklace.

Q. Do you frequently have customers of yours come to have their necklaces repaired?

A. Yes.

Q. Restrung?

A. Yes.

Q. And new clasps put on them, something of that kind?

A. Yes, sir.

Q. I take it, it would be quite a common thing for a lady who had a necklace for some little time to bring it to you for the purpose of being sure that it was in perfect condition?

A. Yes, sir.

Q. Suppose a lady should bring in a necklace to you and say to you that she wanted you to remove the string and put in a new string, and that you should take out the string and lay the pearls on the table; of course, that would still be a necklace?

172 Mr. SMITH. I object to such a hypothetical question as that.

The WITNESS. Of course it wouldn't be a necklace if the string wasn't in it.

Mr. SMITH. The board or the court can just as well decide such a conundrum as that.

Gen. Appr. SHARRETTS. As to what this witness may think, it is merely his individual opinion.

Mr. KEMP. I understand he is testifying from a trade standpoint, as an expert in trade.

Gen. Appr. SHARRETTS. You didn't ask him that.

Mr. KEMP. Am I to ask him whether he is asked as an expert or not?

Gen. Appr. SHARRETTS. It should appear on the record as to whether it is his opinion or from a trade standpoint.

Q. What would the trade regard that collection of pearls after the string has been taken out of it, a necklace or not?

A. I wouldn't care to be responsible for anybody else's opinion; I don't know what the trade would regard it. If you take 10 men and submit a certain proposition to them as to what the trade would regard this, that, or other thing, the 10 men would be apt to disagree as to what they would regard one thing or another.

Q. You would decline, then, to state in your opinion what the trade would say as to what this article was?

173 A. I put in that shape, that I don't care to express an opinion as to what the opinion of other people would be.

Q. What is your individual opinion?

(Objected to by counsel for the importer.)

(Objection sustained.)

Q. Do I understand you, then, Mr. Nissen, that you are not willing to state from a trade standpoint as to whether or not a necklace brought in to your place of business for the purpose of repairing, after the string has been taken out, has been changed so that it is no longer a necklace?

A. I am willing to state this: As a physical fact, when the string is removed from the necklace it is not a necklace.

Q. Commercially?

A. Commercially or physically, or any other way.

Q. You say commercially or physically it is no longer a necklace?

A. No longer a necklace.

Q. That is your interpretation?

A. That is my interpretation, because a necklace is a specific thing; you have got to be able to lace the thing in order to be a necklace, and you can't lace the individual pearls around the neck.

Q. And the bare fact of taking out the string has changed its name in the trade so that it is no longer regarded as a necklace; is that true?

A. Yes; I answered before that I didn't care to testify for the trade, but as a general proposition I would say that is the case.

Gen. Appr. McCLELLAND. You are answering now so far as you understand trade usage?

174 The WITNESS. Yes.

Q. What is it after it has ceased to be a necklace?

A. A collection of pearls.

Q. A collection of pearls similar to a necklace?

Mr. SMITH. I object to that, as calling for the opinion of this witness.

Q. You have heard the testimony of Mr. Citroen as to the manner in which these pearls were brought in here?

A. Yes, sir.

Q. Were these pearls, assuming them to be the same 37 that you saw on the other side, similar in use to the pearls which would form a necklace?

Mr. SMITH. I object to that.

(Objection overruled.)

(Question repeated to witness.)

Mr. SMITH. I object to that on the ground that the use of these pearls and of other pearls may be shown, and whether the two uses are similar or dissimilar is a question which the board is to pass upon.

Q. Assuming that these 37 pearls in question here are the same that you saw, are they similar to the pearls which would constitute a pearl necklace?

A. Why, any number of pearls——

Q. Just answer that question, yes or no.

(Question repeated.)

175 A. Why, any number of pearls will constitute a pearl necklace.

Q. You would say, then, that these 37 pearls are similar to the pearls which would go to make up a pearl necklace?

A. Of course they would.

Q. They would be similar in quality, would they, to any other pearls of similar size?

A. No; I wouldn't say that.

Q. What do you say; I asked you whether they were similar in quality.

A. You didn't ask me whether they were similar in quality, but whether they were similar to other pearls.

Q. Following that I asked you if you would say that these 37 pearls were similar in quality to the pearls which would naturally go to make up a given necklace.

A. I don't know of any given necklace.

Q. Well, any necklace.

A. I already said that personally I would not have made a necklace of these pearls.

Q. Were they similar in quality and texture to the pearls which would go to make up a pearl necklace; any pearl necklace, for instance?

A. Why, yes; I can answer that question in the affirmative, on the same principle that the same number of pearls and round pebbles divided into pearls and marbles would make a necklace, if you are satisfied with them.

Q. Do you want to qualify it that way?

A. Why, yes.

Q. I am trying to line this up against a pearl necklace, not a
176 marble necklace; I am trying to have you testify as to the similarity between these 37 pearls.

A. That would specify a particular other lot of pearls, and I don't know of any other particular lot of pearls that could be designated as the pearls with which I could make the comparison.

Gen. Appr. SHARRETTS. The board is willing to take judicial notice of the fact without evidence that these pearls are similar in material, quality, texture, and intended purpose of use to pearls that do constitute a necklace; we will concede that.

Mr. SMITH. In order to save time, I will concede that these pearls are similar in material and in quality and in texture to pearls that would be used for a necklace. As to their being similar in use, why, of course if they are used for a necklace, they are used for a necklace; and if they are not, I don't see how they can be similar in use. I don't know what you mean by similitude in use.

Q. Mr. Nissen, you said something about these pearls being drilled and to that extent their use is limited, did you not?

A. Yes, sir.

Q. What did you mean by that, when you spoke of their use being limited; limited to what?

A. After pearls are drilled their use is necessarily limited to the use in a piece of jewelry where a drilled pearl will fit in.

Q. On what articles of jewelry would this be?

177 A. They would primarily be necklaces, and next to that there isn't any other piece of jewelry that you couldn't make out of a drilled pearl.

Q. When you speak of "couldn't," do you mean profitably and commercially, and from a trade standpoint?

A. From a trade standpoint?

Q. Yes.

A. I am at a loss to know just exactly what you mean by trade standpoint.

Q. You speak of the use that could be made, a dozen different uses: you could have a pearl put in a watch chain, for a charm, and a lot of different ways; what I mean is the use that would be profitable to a man?

A. If he couldn't use the pearls for some other purpose, he would naturally use them the way that would be most profitable, and I want to add to that that whenever a drilled pearl is used for this purpose it is because they can't be used for some other purpose which would be more profitable to use it in if it were not drilled. In other words, a drilled pearl is worth less than if it was an undrilled pearl.

Q. Would you say, then, that these 37 pearls would be worth less because they were drilled than they would have been if undrilled?

A. I would decidedly say yes to that proposition.

Q. Would it be a usual or customary thing in your trade to have 37 pearls of substantially the same size as these 37, which were undrilled, in one collection?

A. Well, I have had them myself.

Q. Is it a usual thing, or unusual?

A. It is not very unusual to find a collection of large pearls of that kind anywhere.

178 Q. You have stated that there were certain uses to which drilled pearls were put in making up articles of jewelry. Will you state the principal ones?

A. Why, such as have been shown here in evidence; such as illustrated on photographs. I have shown some scarf pins, some festoon necklaces. They are practically in use in any piece of jewelry.

Q. Would the principal use of the 37 pearls of the size these pearls were be that of a necklace?

A. Wherever they could be utilized as a necklace they undoubtedly would be.

Q. And wouldn't the fact that they were together in drilled condition indicate for what they were intended to be put on the market?

A. There again I refuse to testify as to the intention of the man that drilled the pearls.

Q. I am not asking you that; I am only asking the intention of the man who had drilled the pearls.

A. Well, the man who had the drilled pearls and bought them drilled would probably have no alternative but to accept them drilled, and, if possible, utilize them as a necklace.

Q. So the first possible attempt would be to put them in a necklace?

A. That would be my first attempt.

Q. And the fact that they were for three or four years in that condition would be a further evidence that that was the intention of the person who held them?

A. Probably.

Q. Now, comparing these 37 pearls in their drilled condition, as you saw them, would you say or not that off the string they were less valuable than they were on the string?

179 A. No; it wouldn't make a particle of difference.

Q. So that the mere fact that they were drilled and unstrung would not indicate to your mind that they were less valuable than they would be on the string?

A. No; it would not make any difference.

Q. Could you name the amount of money that it would necessarily cost to put a suitable clasp on this string?

A. That might cost $2.50.

Q. I am asking you in accordance with the size of the pearls.

A. I can't testify to that, for the simple reason that some would consider it suitable with a plain gold snap; some would want a little

barrel snap set with small diamonds, costing about $150; others would want a closed snap with a single diamond that might cost $5,000.

Q. You are giving substantially the range that might happen if somebody should suggest a clasp?

A. Yes; there is no uniformity in that, because there are hardly two people that want the same clasp.

Redirect examination by Mr. SMITH:

Q. Mr. Nissen, for the various purposes other than that of a necklace, for which drilled pearls are used, to which you have testified, and which you have heard others to testify in this proceeding, were these 37 pearls that you saw similar to such pearls in material, quality, and texture?

A. Yes.

180 Q. Is it a fact that when a party has a tentative collection of pearls on a string, more or less suitable for a necklace, that he may find either on other strings or separately one or more pearls which he decides it would be desirable to substitute for some of those that are on the string?

A. Yes, sir.

Q. Is it a common thing for people that have four or five different strings of pearls to separate the pearls on them and recombine them in different combinations?

A. Yes, sir; I am doing that every week.

Q. Now, you were asked illustratively here about horses, and I happen to know that you are something of a horseman yourself. Isn't it a fact that if a man had a pair of horses perfectly well matched, if he happened to strike a purchaser who didn't want a pair and who had taken a fancy to one of those horses, that he might obtain from that purchaser a price more than half the price of the pair?

A. I should think he would.

Mr. KEMP. I object to that. I presume that is self-evident; it doesn't need to be testified to.

(No ruling.)

By Mr. KEMP:

Q. And after you had matched this pair of horses that you speak of and you had a prospective purchaser for one of them, would you or would you not charge him more for that one than if you had not matched them together?

A. Very likely; yes. But I am not a horse dealer.

181 MICHAEL DREICER, a witness called in behalf of the importer, having been duly sworn, testified as follows:

By Mr. SMITH:

Q. Mr. Dreicer, what is your business?

A. I am a jeweler and an importer of precious stones and pearls.

Q. How long have you been in that business?

A. About 25 years.
Q. Your father was in the same business before you, I think?
A. Yes, sir.
Q. You continued the business?
A. I do.
Q. Have you been handling this class of merchandise very largely?
A. I have, comparatively.
Q. Have you, for a number of years, been handling pearls?
A. I have.
Q. Do you know a gentleman in Paris named Mr. Hugo Citroen?
A. I do.
Q. How long have you known him?
A. About 15 years.
Q. You know his brother here, Mr. Bernard?
A. I do.
Q. You have been in Mr. Citroen's establishment in Paris?
A. I have.
Q. Mr. Bernard Citroen has testified here as to some 37 pearls that were imported and are under consideration here, that they were shown to you in Paris.
182 A. I assume that they are the same pearls that were shown to me in Paris.
Q. You did see a collection of some 37 pearls there?
A. I did.
Q. When?
A. Well, it is over a year ago.
Q. Were these pearls of the same size or different sizes?
A. Different sizes.
Q. Were they of the same quality or different qualities?
A. Different qualities.
Q. Were they of the same color or different colors?
A. Of different colors.
Q. As a dealer in pearls, Mr. Dreicer, when you are considering the question of buying a collection of pearls, how do you arrive at their value?
A. I look through the pearls one by one and put different values on the different pearls and then arrive at a conclusion; sum up the whole thing and arrive at the value of them.
Q. You mean, looking at the individual pearls, you fix a certain value per base?
A. I fix a certain base value.
Q. Now, when you have done that and have added up the values that you thus determine, would you give any more for the lot because they were a collection?
A. That would depend a great deal on circumstances; generally not.
Q. I ask you whether it is true, as a general commercial proposition, that the value of a collection of pearls is greater than the
183 aggregation of the separate values of the individual pearls?

A. As a rule, no; but it would depend altogether as to who wanted them and for what purpose they were wanted.

Q. In other words, if a particular party wanted them he might offer more if he wanted the lot?

A. If he wanted the lot.

Q. Were these pearls drilled or undrilled?

A. They were drilled.

Q. Is the value of a pearl increased by drilling it?

A. It is not.

Q. Why not?

A. The mere fact of putting a hole in the pearl itself. The expense is so slight it couldn't amount to more than that.

Q. Does it, as a matter of fact, limit the uses to which a pearl may be put?

A. It doesn't limit it.

Q. That is to say, are there uses to which whole pearls can be put to which drilled pearls can not be put?

A. Yes; that is true; there are uses.

Gen'l Appr. McCLELLAND. Then to that extent the use of the drilled pearl is limited?

The WITNESS. It is more limited than an undrilled pearl; yes. I understood that when he said limited it was limited just to a certain purpose.

Q. Mr. Dreicer, when you saw these 37 pearls at the time you stated, were they on a string?

A. No.

Q. In what condition were they?

A. They were on separate strings.

184 Q. How many on a string?

A. Well, they were not equally divided as to number.

Q. That is to say, there were some strings that had one or two pearls on, and others that had eight or ten or a dozen on them?

A. Quite right.

Q. Were any of the pearls which you saw, in paper, without any string on them?

A. They were.

Q. Were these pearls the subject of some discussion between you and Citroen as to price?

A. Somewhat.

Q. You mean that some of the pearls were either offered to you for sale or you made an offer to buy some of the pearls?

A. Right.

Q. But not all?

A. Not all.

Q. So you received quotations of separate prices for separate parts of the pearls?

A. Yes, sir.

Gen'l Appr. SHARRETTS. Mr. Dreicer, I understood you to say that you estimated the value of these pearls on the base; did you put a different base value on account of quality on the different packages?

The WITNESS. Yes, sir.

Q. Mr. Dreicer, is it usual in your business to allow dealers of repute, who are known to the party who has a collection of precious stones in his possession, to allow them to take them on memorandum?

A. Yes.

185 Q. To see if they can find a purchaser for them?

A. It is usual.

Q. And if he doesn't find a purchaser he is at liberty to return them?

A. Correct.

Q. But is it usual to allow a person in your business to take a certain number of pearls on memorandum to see if he could dispose of them as a necklace?

A. It is.

Q. And if he finds he is unable to secure a suitable purchaser he returns the pearls?

A. Correct.

Q. Would it not be usual for a dealer to obtain a certain number of pearls from various dealers on memoranda with a view to putting the entire lot in a necklace?

A. That is the usual policy.

Q. And if he fails in that enterprise he returns the separate lots of pearls to the persons from whom he got them?

A. That is correct.

Q. Is it a usual thing in your business in handling a collection of precious stones of very high value for two or more dealers to combine to finance the transaction?

A. It is.

Q. Each contributing a portion of the price and receiving a proportionate share of the profits?

A. It is.

Q. Is it usual or unusual in your business, in the case of a proposed purchaser not in the trade—a wealthy man or woman, whose wealth and responsibility is well established—to allow them to take an

186 article of jewelry or a collection of stones or pearls, or whatever it may be, and while they are considering the question of purchasing them to wear them once or twice if they wish to?

A. It is.

Q. For what uses are drilled pearls used, Mr. Dreicer?

A. Drilled pearls are generally used in necklaces, but they are used for other purposes as well.

Q. Mention some of the others, please.

A. A drilled pearl in China was used for the purpose of buttons.

Q. I mean especially in this country.

A. First, I believe I said, necklaces; then for lorgnette chains; for fancy articles, such as draped necklaces or for levalliers, or for bracelets; there are many articles that it can be used for.

Q. Are those uses of drilled pearls at all unusual?

A. No.

Q. I show you here a photograph marked "Exhibit A;" it has been testified that the pearls at the top of the brooch are drilled pearls.

A. That is not unusual; the lower one is not unusual also.

Q. The bracelet?

A. Not unusual.

Q. Would the same be true of this festoon necklace that I show you [referring to Exhibit B]?

A. No, it is not.

Q. Also referring to the chain on Exhibit C, is such a use as there indicated at all unusual?

A. It is usual.

Q. Mr. Dreicer, if you saw any collection of papers—half a dozen papers—one or more pearls in each paper, one or three or five or eight or ten or twelve, which were drilled with a hole in them,
187 would there be any way of determining by looking at those pearls whether they had been strung as a necklace?

A. No.

Cross-examination by Mr. KEMP:

Q. Suppose you had 37 of them which were matched as to size, of unusually large size, and you found those 37 in five separate papers, would that be any indication to you from what you saw of them as to whether they were suitable for a necklace or not, and that it was the intention that they should make a necklace?

A. I would naturally see if they would go together.

Q. You would try those 37 pearls if they would go as a necklace?

A. I suppose I might do that.

Q. That would be the first thing you might do as a dealer in pearls, would it not?

A. If I saw them in separate packages.

Q. If you should find 5 packages of pearls in a box, 37 pearls of unusual size, would it be your first effort to determine whether——

A. I have made up so many necklaces that my natural impulse would be to put them together to see if they would not go together.

Q. As a necklace?

A. Yes.

Q. You mentioned the first use of drilled pearls was for a necklace?

A. The first use; yes—I don't say that is the first use.

Q. But if they were matched as to size——

188 A. What do you mean matched as to size?

Q. Graduated. Would you say, then, that they were suitable for a necklace, as one of the things that you would make use of them?

A. Well, any pearls that are well matched would be suitable for a necklace.

Q. Would the trade, generally?

A. That I can't answer on my oath.

Q. You say you are an importer of pearls?

A. I do.

Q. How long have you been so engaged?

A. Personally?
Q. Yes, personally.
A. Twenty-three years.
Q. Have you a business house here?
A. I have.
Q. What is the name of it, please?
A. J. Dreicer & Son.
Q. May I ask you which is the son part of it, yourself?
A. I am.
Q. Has this firm been in existence for all these 23 years that you speak of?
A. Longer.
Q. And has it always had a place of business here in New York?
A. It has.
Q. Do you also have a place of business in Paris?
A. Not my own office; I make my headquarters at another office in Paris.
Q. How long have you done that?
A. Since I have been going to Europe.
Q. How long has that been?
A. Since 1884.
Q. Have you gone over to Europe at certain times nearly every year?
189 A. Nearly every year.
Q. Have you been over in Paris the last four or five years?
A. I have.
Q. And engaged in your business, of course, while there?
A. Yes.
Q. Looking up pearls?
A. Yes.
Q. Making arrangements for the purchase of pearls, or looking into the matter generally?
A. Yes.
Q. How long have you known Hugo Citroen?
A. About 15 years.
Q. You spoke of having seen these 37 pearls, I think, at one time, didn't you?
A. I did.
Q. When was that?
A. In Paris.
Q. When, please?
A. A little over a year ago; I can't determine exactly. I should say it was some time last February a year.
Q. About 1906?
A. Right.
Q. Have you seen them before that time together?
A. I did.
Q. Where were they then?

A. In London.
Q. In whose possession?
Mr. SMITH. I object to it as immaterial.
Genl. Appr. SHARRETTS. Do you simply object to the name of the party?
190 Mr. SMITH. I object to that in view of the testimony that he saw them in London, as well as upon the ground that it is immaterial to go back to London to trace these pearls.
The WITNESS. Well, I have made a mistake there in regard to the way I have seen them. Do you mean immediately before that time?
Mr. KEMP. Yes.
The WITNESS. I saw them in Paris then.
Q. How long before?
A. I don't know.
Q. How long before you saw them this last time did you see them in Paris?
A. Oh, that is some years ago.
Q. In whose possession, Mr. Citroen's?
A. They were in the possession of Mr. Eknayan in Paris.
Q. Were they strung at that time?
A. I don't remember that, sir.
Q. Did you ever see them when they were strung?
A. Yes.
Q. When and where?
A. I saw them in London.
Q. When, how long before?
A. But I didn't see them in that number.
Q. What number did you see?
A. More pearls.
Q. How many more?
A. There were 43 pearls.
Q. The next two times you saw them, I take it, they were not 43 together, there were 37; is that correct or not?
191 A. It was a different amount, I know; I can't remember the exact amount.
Q. Do you mean to say now that you don't remember the exact number of pearls the last time you saw them?
A. No; I do not.
Q. You couldn't say whether there were 37 or not?
A. No.
Q. Do you remember anything in particular about their size?
A. Not particularly; I remember generally.
Q. Would you say they were very large pearls?
A. Oh, they were large pearls.
Q. Did you ever have them on memorandum for sale?
A. Of them; no.
Q. You never did?
A. I never took them on memorandum.
Q. Did you ever see them worn as a necklace?

A. No.

Q. Do you know whether they have been worn as a necklace?

A. No.

Q. Were you in Paris about the time the sale was made?

A. No.

Q. Do you know of any way of identifying these pearls in any way?

A. I couldn't at this present moment absolutely identify them; I don't think any one in the world could.

Q. Mr. Dreicer, do you know whether or not Mr. Citroen made any other attempts to sell them than what he made to you?

192 A. I don't know; only what I heard; that is not knowledge.

Q. How many different times did you see those pearls on the other side?

A. I saw them quite a few times.

Q. State in a general way, if you can.

A. I have told you before that I saw them at Citroen's, and I stated before that I had seen them at Eknayan's, and then I stated that I had seen them in London, and that is about all the different times I had seen them.

Q. What other times had you seen them?

A. Those are the only towns I had ever seen them.

Q. I said times.

A. I saw them in London.

Q. Have you seen them several times in London?

A. Yes.

Q. In different places?

A. No.

Q. Always in the same place?

A. Yes.

Q. Will you please state in what condition you saw them in London?

A. I saw them unstrung.

Q. What do you mean by that?

A. I mean loose pearls.

Q. Were they arranged in graduated form when you saw them in London?

Mr. SMITH. I object on the ground that what they may have been displayed as in London three or four years before these pearls were imported is totally immaterial.

193 Genl. Appr. SHARRETTS. Objection overruled, because the Government is attempting to show that they had been in the form of jewelry or a necklace, which it is competent to bring out by this witness.

Mr. SMITH. Even if it was 20 years ago?

Genl. Appr. SHARRETTS. Even if it was 20 years ago.

A. I never saw these 38 or 37 pearls strung as a necklace.

Q. Have you ever seen them in necklace form, in graduated, matched condition anywhere?

A. I have never seen these 37 pearls in the form that you mention, in necklace form.

Q. I will ask you: Are pearls frequently shown unstrung in a box or in a shape resembling a necklace all graudated and matched?

A. They are.

Q. Without a string?

A. Without a string.

Q. That is one of the common ways of showing pearls?

A. They are sometimes shown that way.

Q. And pearl necklaces particularly?

A. Not particularly.

Q. Is that one of the ways?

A. Yes.

Q. Did you at any time in particular see these pearls arranged as I have described to you?

A. No, I did not.

Q. State, in the three or four different times that you saw them, in what particular situation they were.

A. I saw them loose.

Q. All together?

194 A. All together.

Q. In a heap?

A. In a heap.

Q. With no strings in them?

A. No strings.

Q. Were they always in that condition when you saw them?

A. They were always in that condition when I saw them.

Q. I thought that you testified that you saw them at one time when they were strung in separate bunches?

A. Well, I did testify to that; I am testifying about the time I saw them in Citroen's office.

Q. I am asking you now if you ever saw them?

A. I saw them at that time on separate strings and a few of them were in papers.

Q. Could you tell me the number of papers that you saw them in?

A. Well, there were papers and strings; I can't tell you exactly.

Q. There were no other pearls in this aggregation that you speak of, except the 37, were there?

A. I can't testify as to the number exactly.

Q. But substantially that number?

A. Substantially, I suppose.

Q. Now, in matching pearls for a necklace, what is the first thing you do with reference to getting your aggregation together; what is the first feature of it that you particularly investigate?

A. The first thing I do would be to get a price. What do you mean, if I had an order for a necklace?

Q. Yes.

195 A. I should certainly want to know the price the party wanted to pay. The first thing I would try to do would be to get some pearls.

Q. Suppose the price was $360,000, what would you do then?

A. I would get all the pearls I could possibly get together and see what I could make.

Q. What would you do in the way of selection; would you select according to size?

A. I would first get the pearls, you understand, and after I get as many pearls as I could put together, I would see how they match.

Q. Then after the size?

A. Then I would go after the perfection. I would look at the skins and I would get the sizes together. I have no fixed rules in making a necklace; I get the pearls together as well as I could.

Q. From what you saw of these 37 pearls, you would say that they had been selected for the purpose of making a necklace?

A. I suppose some one tried to make a necklace.

Q. Some one had tried to make a necklace, you think?

A. I suppose so. The question of matching a pearl necklace is entirely a personal test. What one man would consider a very good match another man would consider a very poor match.

Q. Would you say that these 37 pearls were similar in texture and quality?

A. No; they were not similar.

Q. Would they be similar to what would ordinarily be known as a pearl necklace?

A. In the first place, you understand, they were very large
196 pearls; it is a question of individual opinion as to whether they would constitute a necklace on the whole.

Genl. Appr. McCLELLAND. He is asking you what you consider about their quality and texture?

WITNESS. I thought they were very fine.

Q. And you thought they were suitable for a pearl necklace, didn't you?

A. What I personally thought?

Q. Yes.

A. Well, they might go together.

Q. And they were together when you saw them?

A. They were not together in necklace form; they were loose in paper.

Q. You have spoken of a tentative collection; what do you mean by that?

A. A collection of pearls is something that is very indefinite; in the same way I might consider a collection of pearls from entirely different stand point that another man would. I might consider a collection of pearls one big pearl, three small ones, and two medium ones. It is a collection since you have got a lot together; three pearls would constitute a collection of pearls.

Q. Was the fact that these pearls were drilled any indication as to what use would ultimately be made of them?

A. Well, the first thing, I suppose, a person does with drilled pearls is to try and get them together and make a necklace. That is the first thing that I would do; I don't know what others would do.

Q. Did you examine these pearls sufficiently to judge as to their separate values?

197 A. I did.

Q. Would you say that their separate values were greater or less than their collective value as you saw them?

A. I should think about equal.

Q. Do you say, then, that the fact—if it was a fact—that they had been selected, assorted, and put together for the purpose of making a necklace would not increase the value of the separate pearls?

A. As far as I am concerned, if they were absolutely matched, if it was an entire necklace and every pearl absolutely matched, I might give a little more for them.

Q. When you speak of absolute matching——

A. There is such a thing of getting them very, very close together.

Q. Would that be more easily done in smaller size pearls than in these very large ones?

A. Naturally.

Q. So that as far as these large pearls were concerned, the matching probably was done as well as could be done with those sized pearls?

A. Not as well as could be done.

Q. Well, ordinarily done?

A. Ordinarily is very general. It would depend altogether on the resources of a dealer, in as large a necklace as this, as to what could be done. Naturally, if you went to a small dealer in pearls, he couldn't do anything for you.

By Genl. Appr. McCLELLAND:

Q. Was this aggregation of pearls, in your judgment, as
198 well matched as an equal number of pearls in a necklace of the value of $220,000 or $360,000 ought to be?

A. I have seen better matched pearls.

(Question repeated.)

A. No.

By Mr. KEMP:

Q. In what respect would you say it was not as well matched as it ought to be?

A. They were not even in color; some of the pearls had imperfections in them; some pearls were not as bright as others, not as fine in skin as others.

Q. So you seem to think, do you, that they were not a very good set of pearls?

A. No, I have not said that. I said they did not match as well as pearls should which go to make up a necklace of that value.

Q. Do you know of any necklace of that value that could be better matched, taking it all in all, size, color, and graduation?

A. Yes.
Q. You do?
A. I do.
Q. Was it your selection?
A. Not entirely.
Q. You did not attempt, as I take it from what you say, to improve this collection by any pearls that you had to offer?
A. No.
Q. Did you ever know of undrilled pearls being sold, or offered for sale, for use in a necklace?
199 A. Yes.
Q. Under what circumstances?
A. Oh, that is a very general occurrence for drilled pearls to be offered separately.
Q. I mean a collection of 37; would you accept 37 undrilled pearls exposed for sale as a necklace? Would it not be unusual to find 37 undrilled pearls exposed for sale as a necklace?
A. Would it be unusual?
Q. Usual or unusual?
A. It would be usual—in the first place, I have not got exactly in my mind how long that would be.
Genl. Appr. McCLELLAND. This would be 12 inches.
The WITNESS. To my mind, 12 inches is not sufficient to make a necklace of such size.
(The last question is repeated to witness.)
A. 12 inches for a great big pearl necklace of large pearls is very unusual, because a women's throat is at least 12 inches and it would come tight against the neck; so it is unusual.
Q. Will you tell me whether it is usual to put an aggregation of undrilled pearls together for the purpose of showing them for sale as a necklace?
A. Can't you put your question in another way so it will be plainer?
Q. Is it usual in trade to select undrilled pearls and expose them for sale to be used as a necklace?
A. It is usual.
Q. That is usual?
200 A. Yes.
Q. Could you tell me the probable percentage of drilled and undrilled pearls on the market?
A. That is very difficult to determine.
Q. It has been testified here that somewhere between 85 and 90 per cent of large sizes were drilled.
A. I should say it was somewhere in the neighborhood of 90 per cent.
Q. Now taking these 37 that you saw and comparing them with 37 undrilled pearls, would you say it was usual to find 37 pearls undrilled to be put together for the purpose of a necklace?
A. It is a peculiar question, to my mind.

Q. Would it be usual or unusual to find in trade 37 undrilled pearls intended for a necklace of the size of these 37 pearls that you saw at Citroen's?

A. Well, it would be unusual, I suppose, to find that number.

Q. Is it a fact or not that these 37 pearls being drilled would indicate that they were intended for a necklace?

A. They might be intended for one necklace.

Q. You speak of lorgnette chains and other articles of jewelry being made out of drilled pearls; that is correct, is it?

A. Being made up of drilled pearls?

Q. Yes.

A. Yes.

Q. Would it be natural or usual to take matched, drilled pearls for the purpose of making lorgnette chains?

A. Of these sizes?

Q. Yes.

A. It has been done, but it is not very usual.

201 Q. You would not call it the ordinary custom of trade, would you?

A. It has been done; that is the reason I can't say that it is unusual. I have seen chains made of large pearls as large as these.

Q. Lorgnette chains?

A. Chains; you can term them lorgnette chains if you please.

Q. You spoke of brooches?

A. I did.

Q. Do you use drilled pearls in those?

A. I have.

Q. Would they be matched, drilled pearls?

A. I have used matched drilled pearls as well for brooches.

By Genl. Appr. SHARRETTS:

Q. Mr. Dreicer, if you knew there was a customer in the market for a pearl necklace, a $240,000 or $250,000 necklace, you would assemble together a number of pearls, say 37 to 43 pearls, for the purpose of displaying to that party, as suitable for making a necklace such as they wanted?

A. Would I assemble it?

Q. Yes.

A. I would like to be led to such a thing.

Q. Wouldn't that be your practice?

A. Yes, certainly.

Q. In assembling pearls of that kind, if you happen to have half a dozen pearls that were not drilled but matched with the others, would you put them in the lot as part of the collection?

A. I would.

202 Q. Would you or would you not replace the undrilled with some that were drilled, as being absolutely necessary for making up that necklace?

A. Not absolutely necessary.

Q. Would it be a fact that if you had those that were not drilled——

A. They would be just as serviceable to me.

By Mr. KEMP:

Q. Would you think that it would be commercially a fair proposition to take 37 pearls of the size and character of these 37 spoken of and put them in a lorgnette chain?

A. I personally would not.

Q. Assuming that you have people who came to your place of business for the purpose of having necklaces restrung, would the fact that the string was taken out change the character of the merchandise, or would it still be a necklace?

A. Technically it would change it.

Q. Change it to what extent?

A. Well, it would change it. You have got a lot of loose pearls; that is not a necklace.

Q. Would you expose such merchandise as a necklace or not?

A. No.

Q. Do you mean to say to me, then, that you do not expose for sale pearls for a necklace unless they are strung?

A. I have in isolated cases shown pearls loose and put them together, you understand, in a box. Of course it wasn't a necklace then.

Q. Did you expose it for sale as a necklace?

203 A. Well, if a person wanted to buy a necklace and I didn't happen to have a necklace I would show them pearls.

Q. Would you say that you would not show such an article as a necklace?

A. I would not expose it or offer it for sale as a necklace.

Genl. Appr. MCCLELLAND. Do you or don't you?

The WITNESS. I do not.

Q. Do you mean to say the trade would not do it, generally?

A. Yes.

Q. Do you mean to say that I can't go up the street here and find 50 men who would not do that thing—offer it without a string?

A. I don't say that. I suppose you could find 100 men.

Q. And expose it for sale as a necklace?

A. I don't say it is a pearl necklace; that is not for me to determine. They are a collection of pearls; that is my idea.

Genl. Appr. SHARRETTS. Suitable to be made into a pearl necklace?

The WITNESS. That is my view, Mr. Sharretts.

Q. Do you know what a grooved tray is?

A. Yes.

Q. Is it used common among jewelers?

A. Yes.

Q. For what purpose?

204 A. For the purpose of laying out stones and pearls.

Q. Have you seen these grooved trays where the groove was in the form of a necklace?

A. I have seen them round, if that is what you mean.

Q. And the pearls matched around in that groove?

A. I have.

Q. And those pearls in that shape shown and offered for sale as a necklace?

A. I don't understand that question.

(Question repeated.)

A. Well, it isn't necessary to say that it is a necklace. It is not a necklace if they are pearls not drilled and with no clasp on it.

Q. That is your definition of a necklace?

A. That is my definition of a necklace.

Q. Do you know of loose pearls being placed in a grooved tray, graduated, matched, and offered for sale as a pearl necklace?

A. No; I don't know of any particular case of that kind. As I have stated before, I would say that it wasn't a necklace, for those reasons. Here is another way to look at it: If you have a round groove, like that in a box, and you have got some drilled pearls and some undrilled pearls that are together, as very often happens, you can't say that that is a necklace; because you don't know whether those pearls that are undrilled there are ever going to be used for a necklace. You don't know; you simply show it, "Here is the material to make a necklace."

205 Q. If I put a collection of drilled pearls within a mold, as I have stated, then would you say that is common?

A. I couldn't say then that that was a necklace.

Q. Or that it was common to expose them for sale in that condition?

A. No; I would say, "I could make you a nice necklace of these pearls." If I did show a thing like that, which I don't remember, and if I said, "Here is a necklace," to my mind I would be stating something that is not true.

Q. What would it lack to being a necklace?

A. If the pearls were drilled or undrilled?

Q. Drilled pearls.

A. If it was drilled pearls, the first thing would be to get the pearls to match as to size and to quality.

Q. Having done that——

A. Having done that, to put a clasp on it.

Q. Assuming that all has been done, and that all it needs is a string and clasp, would you still say it would be unusual to expose them in that condition for sale as a necklace?

A. With a string and clasp?

Q. Without string and clasp.

A. Without a string and clasp you can expose them, I suppose, for anything you like, but that doesn't alter the fact that it would not be a necklace.

Q. Would it be unusual to expose such a necklace for sale?

Genl. Appr. McCLELLAND. According to your judgment, may a collection of pearls unstrung ever be a necklace?

206 The WITNESS. No.

Mr. KEMP. Now that, to my mind, lacks about a mile from what I was trying to get at, with all due respect to the board.

By Genl. Appr. SHARRETTS:

Q. Mr. Dreicer, you have stated you saw these 37 pearls assembled together and that they were suitable to be made into a necklace. Do you think the fact of their having been drilled made them any more suitable for that purpose than if some of them were drilled and some were not drilled?

A. It made them more suitable only in this regard: That if you had pearls in the collection that were undrilled, you would just have to pierce a hole in them.

Q. Do you think, as a matter of fact, that the reason you found those 37 pearls drilled was because 90% of pearls of that size were drilled, and therefore the selection naturally would be of drilled pearls?

A. The collection I saw there, Mr. Sharretts, was divided into qualities; for instance, certain pearls were in better necklaces and the worst ones in inferior necklaces.

Q. Do you think that these 37 pearls were drilled expressly to make them into a necklace, or was it because 90% of all large pearls were drilled when put on the market?

A. The majority of large pearls are old pearls, and they were drilled many years ago. They were drilled for some purpose, I suppose; the hole wasn't pierced in them for nothing. I don't think they were pierced for necklaces.

207 Q. You think their being drilled was because they were more common in the market than the undrilled pearls?

A. Well, you see, there are more large pearls drilled in the market. Very few large pearls are found nowadays, and these large pearls that are seen are isolated pearls that have been gathered through centuries or through a period of time.

By Mr. KEMP:

Q. The 37 pearls that you saw were drilled, of course?

A. Yes; they were drilled.

Q. Would that fact indicate or have any bearing upon your mind as to whether they were intended for a necklace?

A. I should say that according to my idea they ought not to be intended for a necklace.

Q. You think the trade would say so too?

A. I think so; intended for several necklaces. You say for one necklace and I will answer that question by no.

Q. Would the fact that these 37 were in a collection together, drilled, indicate to your mind any purpose that they were intended for?

A. It might indicate to my mind that they were in a necklace, but I stated before that I don't think that the 37 pearls as I saw them should have gone into a necklace.

By Mr. SMITH:

Q. As a matter of fact, pearl necklaces are not all made of graduated pearls, are they?

A. They are not.

208 Q. As a matter of fact, pearl necklaces are not all made of pearls of the same lustre, are they?

A. They are not.

Q. As a matter of fact, all pearl necklaces are not made of pearls in the same color, are they?

A. They are not.

Q. The question as to the size, the color, the lustre, the graduation, is simply a question of the value of a pearl necklace, is it?

(The witness does not understand the question.)

Q. If the collection is matched as to color, matched as to lustre, graduated as to size, a pearl necklace made out of such a collection would be a more valuable necklace than one that was made of pearls of the same size or one that was made of pearls of different colors or one that was made of pearls of different lustre?

A. Unquestionably.

Q. Is that right?

A. Right.

NATHAN KAUFFMANN, recalled (in behalf of the Government).

By Mr. KEMP:

Q. Mr. Kauffmann, you told us the other day that you were interested in this sale; did you tell us how many times you have seen these pearls together?

209 A. I don't remember whether I told you.

Q. State it now, if you please.

A. I have seen them quite often.

Q. During the three or four years that you had a part interest in them you saw them frequently?

A. Yes, sir.

Q. In what condition did you see them; were they strung or unstrung?

A. I saw them strung and unstrung.

Q. Both ways?

A. Yes, sir.

Q. Strung on what?

A. On a silk thread.

Q. Is that the ordinary string to put pearls on in stringing them?

A. Yes, sir.

Q. Had you ever seen them with clasps?

A. No.

Q. You swear to that positively?

A. I swear to that positively.

By Genl. Appr. MCCLELLAND:

Q. Is that the kind of string that is used when the pearls are made into a necklace?

A. That is the string that is used for all purposes with drilled pearls; in bunches and even single pearls.

Q. When it is strung to be made into a necklace, is that the kind of a string that is used?

A. I couldn't say that that string was heavy enough to be put permanently in necklace; sometimes the holes are too fine in some pearls.

210 Q. Are pearls as valuable as these 37 pearls, ever permanently put upon a silk string for the purpose of being made into a necklace?

A. Upon the proper thickness of silk.

By Mr. KEMP:

Q. Do you now say that you do not know whether the silk string that you saw these 37 on was of that thickness?

A. I am not prepared to say that; no.

Q. State so that this board may know clearly as to whether or not the usual method at the present time, and perhaps for some years back, is to string pearls on a silk cord permanently and then attach clasps in order to be worn as a necklace; is that correct?

A. They string pearls on a proper thickness of silk and attach to it a clasp.

Q. That is the common way?

A. That is the common way; yes, sir.

Q. So that, if this string that you speak of were large enough—assuming that it was—all that would have to be done in order to make a necklace was to put on a clasp; is that correct?

A. It would have been very unsafe to do it; but it may have been all right if the string was thick enough. A string is usually more or less handled, and it would not be safe to attach the clasp to the silk unless it is new. That is never done; when you make a necklace out of pearls that are on a string without clasps, you have to put a new silk through it, to do it properly.

Gen. Appr. MCCLELLAND. As a matter of fact, do you know
211 what kind of a string these pearls were strung upon when you saw them?

The WITNESS. I couldn't tell you what thickness it was. I know it was a thin string. We often have pearls on a string where the string is very thin, and it would not be safe to use the same string to attach a clasp to it.

Gen. Appr. LUNT. Could they use platinum wire?

The WITNESS. No, never; no metal at all.

Q. Did you ever have any conversation with Mr. Citroen about the time these pearls were brought over here as to what duty you would have to pay on them?

A. What duty?

Q. Yes.

A. What rate they would be dutiable?

Q. Yes.

A. I don't remember whether I had any special conversation about it.

Q. Did you have a list at any time, Mr. Kauffmann, of the separate values of these 37 pearls?

A. No, sir.

Q. Did you have a list of the five different sets in which they came over; that is, the one large one, and the six of the next paper——

A. No, sir.

Q. Do I understand you, then, that you had no list of any kind which indicated the separate values of these pearls?

A. That is correct.

Q. Are you familiar with the invoice value that has been put on these pearls?

A. I have seen it.

212 Q. Would you say that invoice value correctly represented the collection of pearls as to their value when they came in here?

A. Yes, sir.

Q. So that they were imported in what is known as unstrung or knocked-down condition, and that was the value put upon them?

A. Yes, sir.

Q. Did you tell me the other day as to whether there was any considerable difference in the value of the first six pearls?

A. I don't remember whether I told you or not.

Q. What was it?

A. There was considerable difference in value.

Q. You heard Mr. Citroen testify as to the grains and weight, and so on, of the respective pearls, did you?

A. Yes, sir.

Q. Would you say that this testimony was substantially correct, as you remember it?

A. Yes, sir; as far as I can recollect his testimony.

Q. What do you say, Mr. Kauffmann, as to the graduation of these pearls so far as size is concerned; considering the large size of the pearls, would you say that they were as well graduated as could reasonably be expected or could reasonably be done?

A. They were fairly well graduated.

Q. Were they fairly well matched in color?

A. That is, you ask me my personal opinion?

Q. Yes.

A. I don't think they were well matched as to color and quality; they were better matched for size than anything else.

213 Q. That was the best graduation there was of the 37 pearls?

A. That I don't say.

Q. You have spoken of two other things that they were not well graded, but as to size you do say?

A. Yes, sir.

Q. Now, I ask you if that was the best graduation that there was as to size?

A. That is the best characteristic; it was as good a graduation as you can make with those, but you can always do better.

Q. What do you say as to what was the best feature of this collection of 37 pearls?

A. The graduation, I should think.

Gen. Appr. McCLELLAND. As to size?

The WITNESS. As to size; when I speak about graduation I refer only to size.

Mr. KEMP. That is what I am trying to refer to myself.

Q. But you don't think they were well selected as to color?

A. No.

Q. What particular set of these five—or four, more particularly—did that appear most in?

A. They were all more or less different in color and in skin; that is to say, skin and quality.

Q. Can you tell me, then, what was the chief point of excellence in this pearl necklace which you made use of in trying to sell them; some quality on which to recommend it?

A. I said before it was the best graduation.

214 Q. So that when you were trying to sell them, the feature that you would make most prominent would be the size; is that correct?

A. Well, we talked it up as best as we could.

Q. What would you mention?

A. The graduation speaks for itself.

Q. What else speaks for itself in these 37 pearls?

A. Well, everything speaks for itself; for the man who does not know I would plead my case for a sale as best as I can.

Q. This was a 37 pearl aggregation that spoke for itself in every respect; is that correct?

A. Everything speaks for itself.

Q. And this 37 pearl aggregation particularly spoke for itself?

A. No more than anything else.

Q. It spoke for itself to the extent of bringing $360,000?

A. There is nothing absurd about that. If I can make a man see a yellow pearl less yellow than it is, that is my business, and I do it.

Q. Do you know what those show trays consist of?

A. Yes, sir.

Q. Grooved trays?

A. Yes, sir.

Q. You are familiar with them in business?

A. Somewhat; yes.

Q. Is it frequent to use grooved trays for the purpose of showing a prospective purchaser a pearl necklace?

A. When the pearls are drilled, no, sir.

Q. You say that positively?

A. Yes, sir.

Q. That is not usual?

215 A. It is not usual because he puts the strings through them if he wants to show them.

Q. Would the fact that these pearls were drilled indicate their ultimate use, the use for which they were intended?

A. In a measure.

Q. In a measure it would?

A. In a measure; yes, sir.

Q. Would it indicate in a measure that they were intended for a pearl necklace or not?

A. I can't answer that way; I must see them together, laid out.

Gen. Appr. McCLELLAND. No; the mere fact of the drilling.

The WITNESS. The mere fact; no, sir.

Q. You say the mere fact that you had these 37 pearls together drilled would indicate to you that they were intended or might be intended for a pearl necklace; do you say that?

A. It depends on the condition in which they are shown.

Q. You say that all depends on the condition in which they were shown?

A. Yes, sir.

Q. Do you say, then, that these five packages of pearls and the box in which they came, all drilled—that seeing those together in that collection would not indicate to you that they were intended as a pearl necklace?

A. Certainly not.

Q. That is your deliberate judgment?

A. That is my deliberate judgment. I would want to qualify it——

216 Q. I don't ask you that. Do you agree with Mr. Citroen as to the approximate percentage of drilled and undrilled pearls on the market?

A. Well, not fully.

Q. What do you say?

A. I have discussed it with him. I find it difficult to say anything definite, but I think 75% would be about the percentage. Still, I am not prepared to say it is not 85%.

Q. Taking into consideration the size of these 37 pearls, what percentage of pearls of that size would you say would come into the market drilled?

A. To-day?

Q. Yes.

A. I should say the same percentage to-day.

Q. A year ago, then?

A. Also.

Q. Do you know whether this pearl necklace has been paid for or not?

Mr. SMITH. Objected to on the ground that there isn't any pearl necklace before the board.

Q. Well, strung aggregation of pearls; collection of pearls; 37 pearls?

A. Do I know if it was paid for?

Gen. Appr. SHARRETTS. By Mrs. Leeds?

The WITNESS. I have no absolute knowledge whether Mrs. Leeds paid for it.

217 BERNARD CITROEN, recalled.

By Mr. SMITH:

Q. When you testified in response to the question of the counsel for the Government that 95% of the pearls that came into the market were drilled pearls, did you understand him to be referring in his question to pearls of the size of those in this aggregation that you brought over here?

A. No, sir.

Q. What did you understand him to be referring to?

A. The question was how many pearls.

Q. You mean all drilled pearls, irrespective of size?

A. Yes.

Q. Do you wish to be understood as testifying that 95% of the pearls of the size of those that you brought over here that come into the market are drilled pearls?

A. Of this size it may be a little less.

Q. What will it be, about?

A. Between 75 and 80%.

(No cross-examination.)

Mr. SMITH. I wish to offer in evidence in this case all the evidence that was taken before the board and formed part of the record in the case of Tiffany, which went to the U. S. Circuit Court and the Circuit Court of Appeals, in which a decision as to the classification of drilled pearls was made, it being my desire that the board shall
218 have before it in connection with the evidence in this case all the testimony that was before the court when it delivered that decision.

(Objected to by govt. counsel. Objection sustained.)

Mr. SMITH. We rest.

Continued to May 13th.

NEW YORK, *May 13, 1907.*

Continued from May 6, 1907.

Appearances as before.

A. S.

FRANCIS E. HAMILTON, a witness called in behalf of the Government, having been duly sworn, testified as follows:

By Mr. KEMP:

Q. Your occupation, Mr. Hamilton?

A. Attorney at law.

Q. Also solicitor to the collector?

A. Solicitor to the collector at this port.

Q. And have been for——

A. Nearly five years last past.

Q. Were you present or did you have a conversation with reference to a certain importation of pearls with Mr. Leeds or Mr. Citroen or both of them?

A. Some time in the summer of 1906 I had a conversation with Mr. Citroen and also with Mr. Leeds; not together, but separately.

219 Q. Will you state the conversation you had with Mr. Citroen, or the conversation that was had in your presence with Mr. Citroen?

A. My statement necessarily would be the substance only. Mr. Citroen came to the collector's office by request, and met Mr. Stewart, the collector's secretary, and myself; and we asked him with regard to the necklace in question which he had brought in, and which I then understood had been entered and duty paid at a classification of 10%. We asked him of how many pearls it consisted, and I think he told us at that time that the number was 37. We asked him whether it was a necklace, and he said that it was unstrung pearls. We asked him whether it hadn't been a necklace or strung in the past, and he said that it had been. Whether he stated distinctly that it had been a necklace in the full meaning of the term, I am unable to say, but my understanding of his statement was that it had been a necklace of 37 pearls and was worn. With regard to the purchase by Mr. Leeds of the necklace, I don't recollect with any distinctness any statements made by Mr. Citroen, although he may have made some at that time to us.

Q. Did you have more than one conversation with Mr. Citroen about the necklace?

A. I have a recollection of only one; it may be that we talked with him at two different meetings.

Q. I think you said you also had a conversation with Mr. Leeds relative to the necklace?

A. I did, in the company of Mr. Stewart, the collector's secretary. Mr. Leeds stated——

Mr. SMITH. One moment, Mr. Hamilton. I object.

220 Q. I will ask you, Mr. Hamilton, to confine your reply to the question of what Mr. Leeds stated, if anything, relative to the condition of the necklace at the time he entered into negotiations for its purchase in Paris.

Mr. SMITH. I object to this as an attempt to introduce into this case incompetent, hearsay testimony. Second, upon the ground that any conversation in Paris between Mr. Leeds and any other person with reference to this merchandise is immaterial and incompetent. Third, on the ground that no relation of private agency or other relation between Bernard Citroen, the importer of this merchandise, and William B. Leeds has been shown which lays any foundation for the claim that any statements of William B. Leeds can in any way bind Mr. Citroen.

Genl. Appr. LUNT. Testimony calling for a statement by Mr. Leeds concerning the condition of the pearls in Paris we hold as inadmissible.

Q. Did Mr. Leeds make any statement to you as to the price he paid or was to pay for these pearls?

A. Not to my recollection.

Q. Was a letter written to the department by the collector relative to these pearls?

A. 15th of June; yes, sir.

(Witness produces copy of letter in question.)

221 Q. Were you present at the time that the letter was written?

A. I don't think I was.

Q. Did you know of the fact that it had been written about the time it purports to have been signed?

A. Yes, sir.

Q. Was the letter when it was written one in which you took any part as to advising its form, as to its substance?

A. I gave the collector all the information which I had, and which he embodied in that letter, in connection with Mr. Stewart.

Q. How long after having sent for Mr. Citroen was this letter——

A. I would be unable to say, Mr. Kemp.

Q. Within two days?

A. Within, I should say, 15 days.

Q. Was another letter subsequently written to the department?

A. I believe it was; on the 27th. It was prepared in my division by my chief clerk.

(Witness produces copy of letter dated June 27, 1906.)

Q. Under your supervision?

A. I read it after he had prepared it.

Q. Does that contain a statement of the facts as you were informed at that time?

A. To the best of my recollection, it did; yes, sir.

(Letter offered in evidence. Objected to by counsel for importer. Objection sustained.)

222 Q. After reading that letter of the 27th, does that refresh your memory as to what you have already testified to in the conversation had with Mr. Citroen?

A. I don't think it refreshes it any; it leaves it just where I testified.

By Mr. SMITH:

Q. Mr. Hamilton, I need not say to you that this is an important matter, and that you are a witness under oath; of course you appreciate that as well as I do. I ask you whether you are willing to swear positively that Mr. Bernard Citroen told you that this lot of pearls which are in question here had been worn as a necklace in Paris?

A. I don't think the word worn was used.

ALEXANDER MCKEON, a witness called in behalf of the Government, having been duly sworn, testified as follows:

By Mr. KEMP:

Q. What is your occupation, Mr. McKeon?

A. Acting deputy surveyor of customs.

Q. How long have you been such?

A. Six years.

Q. During the year 1906 as acting deputy surveyor what were your duties?

A. Supervised the examination of baggage of passengers from foreign countries.

223 Q. Do you remember the fact, or if it was a fact, that Mr. Leeds and his wife and daughter came in a certain steamer during the year 1906, and that you had a conversation with them?

A. Yes, sir.

Q. Could you give me the name of the steamer and about the time?

A. One of the German steamers; the names are so similar I really can't tell off-hand.

Q. About what time of the year was it?

A. I think it was June, if I am not mistaken. I have not refreshed my memory on the thing at all.

Genl. Appr. SHARRETTS. Have you any memorandum about you?

WITNESS. Yes, sir. [Looks at same.] Arrived Kaiser Wilhelm II, June 13, 1906.

Q. Did you meet him as he came off, or did you get on the ship?

A. I met him on the wharf after he came off the boat.

Q. You then discharged your duty as acting deputy surveyor?

A. As deputy surveyor.

Q. What conversation did you have with him with reference to these pearls?

Mr. SMITH. As to any conversation that this witness had with Mr. Leeds relative to these parls, I submit it is open to the same objection and the same ruling as the board has just made in regard the conversation with Mr. Hamilton.

Q. Did he make a declaration with reference to the pearls?

224 A. No, sir.

Q. Did he hand you a memorandum with relation to them?

Genl. Appr. SHARRETTS. Mr. Leeds or Mr. Citroen?

Mr. KEMP. Mr. Leeds.

A. He made the statement after I asked him about them; not voluntarily.

By Mr. SMITH:

Q. You don't mean, when you use the word declaration, Mr. McKeon, a baggage declaration by a passenger?

A. Yes, sir.

Q. You don't mean to say that Mr. Leeds made any baggage declaration in which he in any way referred to these pearls, do you?

A. I certainly do; he didn't refer to the pearls on his declaration.

By Mr. KEMP:

Q. Did he refer to the pearls in connection with his declaration?

Mr. SMITH. I object to that, unless the Government will say that they intend to contradict the witnesses for the importer and claim that Mr. Leeds brought in these pearls; then I will withdraw this objection, of course.

Mr. KEMP. I want to show by this witness that the statement was made to this witness.

225 Gen. Appr. MCCLELLAND. Was the statement embodied in his declaration?

The WITNESS. No, sir; the statement was handed to me in response to my question about these pearls.

Gen. Appr. MCCLELLAND. Then this statement has no bearing whatever on his baggage declaration and is no part of it?

The WITNESS. No, sir.

(Objection sustained.)

Q. Did you ask Mr. Leeds as to the price he had paid for these pearls?

A. Yes, sir.

Q. What reply, if any, did he make relative to that?

Mr. SMITH. I object to that on the grounds already stated fully with regard to the proposed conversation between Leeds and Hamilton.

(Objection sustained.)

GUSTAV F. EISENMANN, a witness called in behalf of the Government, being duly sworn, testified as follows:

By Mr. KEMP:

Q. Mr. Eisenmann, what is your occupation?

A. Importer of precious stones.

Q. Where is your place of business?

A. Now at 452 5th ave.; until November last year we were down 21 Maiden lane.

226 Q. What is the style of your firm, if it is a firm?

A. Eisenmann Bros.

Q. What does that include?

A. Our business here and our business in Paris.

Q. And is your business in Paris managed by——

A. My brother.

Q. One of the partners of the firm?

A. Yes, sir.

Q. Did your brother have any dealings with Mr. Citroen relative to a pearl necklace or 37 pearls?

Mr. SMITH. Objected to upon the ground that the fact that one man is a partner of another can't make the testimony of one of the partners as to what the other partner did in Paris with Mr. Citroen anything but hearsay, second-hand evidence.

(Objection sustained.)

Q. You say you have been a dealer in pearls for quite a number of years, have you?

A. Yes, sir.

Q. How long?

A. About 37 years.

Q. I take it that you know something in reference to this collection of 37 pearls in a hearsay way?

A. Yes.

Q. Did you ever see them yourself?

A. No, sir.

Q. Will you state as to what is the usual form of a pearl necklace; how is it put together; what are the elements of selection used in making a pearl necklace?

227 A. Principally in regard to color and the size, that they match and graduate correctly, and the perfection.

By Gen. Appr. McCLELLAND:

Q. What is necesary to be done to an aggregation of pearls to bring them to the point of being a necklace as recognized by the trade?

A. It is rather hard to make an explanation. Some necklaces are made all of one size, and some necklaces are graduated; and, of course, the largest pearls are always in the center, if it is graduated, and then they follow always in pairs next to the center and graduate down, depending upon the size of the pearls.

Q. Take up an aggregation of pearls that differ in size and color.

A. They should not be of different color; they should be about the same color. To match in color, and always, too, to match in size next to the center and then graduating down.

Q. Then, having collected them so that they are graduated in size and matched as to color, at what point do they cease to be separate pearls and become a necklace, in a trade sense? What more has to be done, if anything, besides the matching of them as to color and grading them as to size to bring them to the point where they would be recognized in the trade as a necklace?

A. Well, for instance, a necklace of large pearls like those 37 has to be about 15 to 16 inches; that is generally considered the size of a necklace; and if these pearls match they are considered a necklace, if they are selected for that purpose.

Q. Is it your idea that the mere matching of them as to color,

228 the grading of them as to size, provided they were taken together making the length that you speak of, does that constitute a necklace without the form of stringing or putting on of the clasp?

A. Yes; if you have an order for a necklace and if you fix it that way, then aftewrards it is strung and shown that way.

Q. Is it ever a necklace, in a trade sense, before it is strung?

A. Before it is strung, yes; I have selected pearls that way, even undrilled, and have shown them in a box and sold them as a necklace.

Q. The trade generally, so far as you understand the usage, call an aggregation of pearls such as you have described, but unstrung, a necklace?

A. Yes, sir.

By Mr. SMITH:

Q. Mr. Eisenmann, suppose that such a collection as you have described were sold to a jeweler who didn't deal in necklaces, never made necklaces, and who was going to take these pearls and mount them on scarfpins, or put them in chains or on brooches, do you mean to say that in his hand these 37 pearls would be a necklace?

Mr. KEMP. I object to the question. It is not predicated on anything that this witness has sworn to at all.

Genl. Appr. MCCLELLAND. Whether in your experience it is at all usual for a jeweler to buy such a collection of matched pearls to be made up into articles of jewelry?

The WITNESS. No, sir.

(Objection sustained.)

229 Q. Well, is it the custom for a jeweler to buy some of that collection for such purposes, if he has the price?

A. I couldn't answer that question, for the simple reason that we don't deal but with jewelers.

Q. I am asking you about people that are jewelers.

A. I understood the question as to a man who was not a jeweler.

Q. I asked you the question as to a man who is a jeweler. Did you ever know of a jeweler buying or trying to buy some pearls out of a collection that somebody had made?

A. Buy out of a collection, yes; if the parties are willing to sell out of them. If there are some fine pearls, a jeweler might want to buy some out of it.

Q. You say that the collection before he bought some out of it would be a necklace in the trade sense, do you?

A. Yes.

Q. After he bought some out of it, would it be known as a necklace in the trade sense?

A. Not unless the pearls he bought would be replaced by some others to take their place and put them into the necklace again.

Q. Speaking in the trade sense, you are a jeweler, are you not?

A. Importer of precious stones.

Q. And dealer?

A. Yes, sir.

Q. You have a store where you sell at both wholesale and retail?

A. Not at retail.

Q. You don't sell at retail at all?

A. No, sir.

230 Q. Have you sold collections of pearls not to jewelers who were going to sell them again, but people who were going to use them and wear them?

A. No, sir.

Q. You never did that?

A. No, sir.

Q. You say that if a man had a collection of pearls which matched in color and were proportionate, graduated in size, that the trade would call such a collection a necklace even if the pearls were undrilled; is that right?

A. I don't say that the trade would call that a necklace. I said I have selected necklaces and shown them to jewelers and they have sold them out of my stock. I have laid them out as a necklace; the pearls were undrilled, and were afterwards drilled and strung. I didn't know who the parties were because I had to deal only with a jeweler.

Q. But whether you have so stated or not, I will ask you the question whether in the trade a collection of pearls graded in size and matched as to color would be called a necklace, irrespective of the fact whether the pearls were drilled or undrilled?

A. I don't think so, not in the trade. I don't think they would be called a necklace unless they were specially made for that purpose for an order, as I have done.

Genl. Appr. McCLELLAND. Specially drilled?

The WITNESS. No; specially selected as a necklace; the pearls to match in size, graduation, and perfection.

Genl. Appr. McCLELLAND. What Mr. Smith wants to know particularly is, would the question of their being drilled have any
231 bearing at all as to whether they were or were not a necklace?

The WITNESS. Yes; for instance, an undrilled necklace in the trade would not be called a necklace.

Q. The pearls would have to be drilled, would they?

A. Yes.

Q. But you say that you have collected pearls as to their size and lustre and quality, some of which were undrilled, and have sold as a necklace; is that right?

A. Yes, sir; they were sold before they were drilled, and after they were sold to the party we had them drilled and they were delivered by the jeweler to the party they were sold to.

Q. But before they were drilled you called them a necklace?

A. Yes, sir.

Q. Would the trade call them a necklace the same as you call them a necklace?

A. That I couldn't tell you.

By Genl. Appr. SHARRETTS:

Q. Would these articles in the assorted and matched condition be known as jewelry in the trade?

A. Not as jewelry.

Q. Would they be known as pearls strung in the trade?

A. At the time when I selected them they were unstrung.

Q. They would not be known, then, as strung?

232 A. No, because they did not have any holes in them; they couldn't be strung.

By Mr. SMITH:

Q. You speak of these collections that you have made. Where did you make them, here or abroad?

A. Here; sold the pearls out of my different lots.

Q. Have you ever imported drilled pearls?

A. Oh, yes.

Q. Have you been importing them frequently?

A. Yes, sir.

Q. Did you ever pay 60 per cent duty on them?

A. No, sir.

By Mr. KEMP:

Q. Mr. Eisenmann, did you show me about two weeks ago a collection of pearls on a grooved tray?

A. Yes, sir.

Q. Were those pearls matched?

A. Yes, sir.

Q. Were they graduated?

A. Yes, sir.

Q. They were not strung, were they?

A. They were strung, except the three largest pearls; two of them were not drilled at that time when I showed them to you.

Q. Were they to be drilled?

A. Yes, sir.

Q. To form a part of this collection?

A. Yes, sir.

Q. In that condition would you say that it was or was not a necklace?

A. Yes, sir; it was a necklace.

233 Q. Now, assuming that these 37 pearls under consideration had been graduated as to size and strung in that condition, would you say it was a necklace and so regarded in the trade?

A. I think so.

Q. Would the fact that the string was taken out of this collection change the character of the article and make it something less than a necklace; that is, if you are exposing it for sale to a prospective purchaser?

A. I think so.

Q. You think it would change the character of the merchandise?

A. No; I think I would consider them as a necklace if they were graduated without the string and laid out in a box that way.

Q. Would the fact that these 37 pearls were in five different papers in one box without the string alter their condition as to whether they were or were not a necklace?

A. I think it is very hard to answer that question without having seen the pearls whether they would match.

Q. Assuming that they were drilled pearls and were matched as to size and color, and that the string had been taken out, and they were put in these five different envelopes in one box, whether it would change the character of the merchandise in any way?

Genl. Appr. McClelland. Having in mind these 37 pearls that are under discussion here.

A. I don't think so.

234 Q. Did you tell me how long you have been in the pearl business?

A. Yes; 37 years.

Q. Formerly you were down in Maiden Lane?

A. Formerly down in Maiden Lane and now at 452 5th ave.

By Genl. Appr. McClelland:

Q. You spoke about a length of 15 or 16 inches being necessary. Would it alter your opinion any if it was demonstrated that this aggregation of 37 pearls only made a necklace 12 inches long?

A. Well, formerly we made necklaces about 12½ to 13½ inches; but lately we lay out necklaces between 14 and 15 inches at least, because people want them now in that size.

Q. Suppose it was demonstrated to you that this aggregation of 37 pearls would only make a necklace of 12 or 12½ inches long; would that have any bearing upon your judgment as to whether it was or was not a necklace?

A. No.

Q. Taking these 37 pearls matched, as already has been stated, as to color, and graded as to size, would they be worth more as an aggregation than they would be as 37 separate and distinct pearls?

A. I should think so.

Q. That is to say, you think the aggregation would be worth more than the pearls valued separately and alone?

A. Yes.

By Mr. Smith:

Q. Do you mean to say that out of such an aggregation the

235 finest pearls, the largest, could not be separately sold at such prices that the balance could be disposed of so that the aggregate amount received for the collection would be more than you could sell them for as a collection?

A. It is possible, but not probable. They are very large sizes of pearls; and the largest pearls, if they are very fine, would be worth more comparatively than the smaller ones in any necklace. That would be a matter of calculation whether you could do that.

Q. Suppose a man who was getting up a collection of his own had four or five of these pearls, the largest and the finest, and particularly wanted to put them into his collection with the others that he had, is it not a fact that those four or five might be sold at such a price that the price received for the others would bring the whole amount received up to a higher point than the price at which the collection as a whole could be sold?

A. If the largest pearls are the finest, it might be possible.

Q. Now, you spoke of some pearls that you had and that you showed Mr. Kemp at your store in a grooved tray, and you stated that some of these pearls were on a string and that two or three of

the largest were not on a string, and that some of them were not even drilled. Am I right?

A. I said that the whole necklace was strung except the three largest pearls, because the two next to the center were not drilled.

Q. So that having in this grooved tray a collection in which all the pearls but three were on a string and the two next to the largest were not even drilled, do you mean to say that that article would be sold in trade as a necklace?

236 A. Yes, sir; because we made it up for that, and we have since had those two larger pearls drilled and put into the necklace.

Q. In the condition that they were in in that tray, would you say that that collection was pearls strung?

A. No; I couldn't say that, because two were not strung.

Q. Would you say that they were pearls set?

A. They were set with the exception of the three largest ones.

Q. What do you mean by set?

A. There was a snap to it in the center, and they all ran up to the three largest ones.

Q. You mean they were on a string with a clasp?

A. Yes, sir.

Q. Is that what you call pearls set?

A. That is the way a necklace is called if the clasp is to it.

Q. But I haven't asked you a word about a necklace; I am asking you about pearls set. Will you define to this board what you understand is meant in trade by pearls set?

A. If they are strung with a clasp added to finish the necklace.

Q. That is pearls set in trade?

A. In trade as a necklace.

Q. In trade that is what is known as pearls set?

A. Yes, sir; as a necklace.

Q. Will you kindly dismiss from your mind the word necklace? I am not asking you anything about a necklace. I am asking you what is the meaning in trade of the term pearls set? Suppose you had four pearls, which certainly would not make a necklace, what do you mean, as to four pearls, by pearls set, in trade?

237 A. I can't tell you, because they are set in different kinds of ways—in brooches, or scarfpins, or anything else. I only speak about a necklace.

Q. But I am speaking about something else, and I want you to answer me about something else that I am asking you. Now, are you familiar with the expression pearls set?

A. No, sir.

Q. In trade?

A. No, sir; because we don't keep anything mounted except pearl necklaces, which we have sometimes finished with a clasp.

Q. Is that all?

A. That is all.

Q. Do you call pearl necklaces pearls mounted?

A. What do you mean by mounted, as on a ring or scarfpin?

Q. Are you familiar in trade with the expression mounted, as applied to pearls, we will say?

A. I said before I am not, because we don't keep anything mounted, except once in a while a necklace, which we finish with a clasp.

Q. Now I ask you if you consider necklaces pearls mounted?

A. Yes.

Q. You speak now of necklaces finished with a clasp?

A. Yes, sir; with a string and finished with a clasp, the clasp attached to the string, and the necklace finished so it can be worn.

Q. When you say finished with a clasp, do you mean that before it is finished with a clasp it is unfinished?

A. It is an unmounted necklace; yes.

238 Q. Do you mean to say, Mr. Eisenmann, that any aggregation of 37 pearls is worth more than the separate prices of the individual pearls?

A. Not if they are not matched; no.

Q. In other words, your testimony as to their being worth more as an aggregation implies that they are to be matched, does it?

A. Yes, sir.

Q. Well matched?

A. Yes.

Q. Carefully matched?

A. I should think so; yes.

Q. Matched by an expert?

A. Matched by a dealer; yes.

NORMAN GALT, a witness called in behalf of the Government, having been duly sworn, testified as follows:

By Mr. KEMP:

Q. Mr. Galt, what is your occupation?

A. I am a retail jeweler and silversmith.

Q. Where are you located in business?

A. Washington, D. C.

Q. How long have you been engaged in this business?

A. Twenty-two years.

Q. And as such dealer in jewelry have you had occasion to deal in pearls?

A. We have, sir; as a firm.

Q. Have you bought and sold pearls?

A. Our firm has; yes, sir.

Q. State just what relation you bear to the firm—what part of the firm you are; senior member?

239 A. I am the entire firm, the proprietor.

Q. You are the firm?

A. I am the proprietor, the firm; there is only one member.

Q. Now will you state what the trade understanding is, or what is your understanding from a trade standpoint, as to the matching of pearls for a necklace what is necessary to do?

Cross-examination as to competency.

By Mr. SMITH:

Q. Mr. Galt, have you ever matched pearls?

A. Seldom personally.

Q. The merchandise involved in this case is invoiced at a value of over a million francs, over $200,000. Have you ever handled such a collection of pearls as that?

A. I have handled them, but not to buy them or sell them.

Q. When I said handled, I mean commercially?

A. No, sir.

Q. You mean when you say handled, that you have been in places where they were and taken them up and looked at them just the same as I might?

A. I mean to say I have had some large collections of pearls left in our place to be repaired, and in that way have had an opportunity to study them.

Q. Have you ever taken pearls of any such value as indicated by the amount I stated to you, and matched them as to color and lustre?

A. No, sir.

240 Q. And you have never, as I take it from your testimony, commercially handled or bought and sold any such collection?

A. No, sir.

Q. Are you an importer of pearls?

A. No, sir; I will say that we have not imported pearls directly. But as our firm is a very old one, a hundred years or more before my time, during a century's experience they might have imported them; so I would not say definitely.

Q. Well, I will say within the last fifteen years?

A. No, sir.

Q. Have you during the last 15 years ever bought valuable collections of pearls?

A. When you speak of valuable, to what extent?

Q. I will say over $50,000 worth in a collection?

A. No, sir.

Q. When you speak of selling jewelry or precious stones, you mean selling them across the counter to the consumer?

A. Personally selling them?

Q. I mean your house; in other words, you don't sell jewelry or precious stones at wholesale?

A. No, sir; we don't sell at wholesale.

(Counsel for the importer objects to the testimony of this witness on the ground of incompetency.)

By Mr. KEMP:

Q. Do you have in your employ and under your control a man who does match pearls?

A. Yes, sir; I do.

Q. And have had for how long?

A. Before my time; before my regime.

241 Q. What does this man do in the way of matching pearls? State in a general way what his duties are.

A. The pearls are in papers. They are taken out of the different papers. They are selected. Of course there have got to be different sizes if you wish to grade them: you have to separate them in the center and run along the line. But where there is but one size the thing is to keep the size first, then collect the sheen of the pearl and the color and the shape. The sheen is the light of the pearl, as, for instance, here [witness indicates a pearl scarf pin which is worn by him]; I term it sheen—brilliancy.

Q. And do your dealings relate to drilled or undrilled pearls, or both?

A. We have dealings in both buying them already strung and buying them unstrung.

Q. Those dealings have gone over a period of years, have they?

A. Yes, sir.

Mr. KEMP. Now, it seems to me that this gentleman has qualified himself to testify to the condition of a necklace. It is not a question of value here at all.

(Objection as to incompetency overruled. Examination resumed.)

Q. Now, what would you say, Mr. Galt, as to whether or not, after you had gone through the process of matching pearls and having obtained something that was matched, that process enhanced the value of the pearls?

242 A. Most certainly, after they were matched. Of course, it requires, to begin with, a person of peculiar talent. It requires time, and very often it is difficult to get them to match; and after they are matched, even to the same size, they are more valuable than they were in bulk.

Q. You would say, then, that a necklace which was graduated in size and color, consisting of 37 pearls in that condition, would be more valuable than the aggregate values of the separate pearls?

A. Most certainly.

Q. What would you say as to whether or not a larger price would be obtained if you were selling from a matched necklace two or more pearls than you would if you were selling individual pearls?

A. Supposing I had a necklace of 37 stones, and then selling two——

Q. Two or more of that aggregation?

A. This is, I understand, a graduated necklace of 37 stones, a center one going along practically of the same color and match? Why, of course, I don't think I would have the opportunity to sell two of them, because I would have to ask so much more for them that I would not find a market for them, because anybody wanting such pearls could possibly get them elsewhere, and they would be valuable to me in the construction of the 37.

Genl. Appr. MCCLELLAND. He wants to know whether you could get as much for the two pearls separated from the necklace as you could get, proportionately, for the aggregation sold together.

Mr. KEMP. I asked him as to whether or not he would obtain a larger price for two or more within a selection than he would
243 if they were taken out of the aggregation of pearls.

The WITNESS. You are speaking of the same pearl necklace?

Mr. KEMP. Yes; same pearl necklace.

The WITNESS. Certainly, we would have to get a very, very large price for them.

By Genl. Appr. MCCLELLAND:

Q. Suppose you took two pearls from an aggregation that were suitable to be made into a necklace and sold those two separately, would you get more for them proportionately than you would if you sold them in the aggregation?

A. I would have to get a tremendous price for them, sir.

Q. I am asking you, based on your experience, as to whether you could get?

A. I have never had any such experience, because I never part with them and never heard of anyone doing so.

Q. Would you say, considering this aggregation of 37 pearls as matched, drilled, and assorted as to size, whether those 37 pearls in that condition would be more valuable than the aggregate of the individual values of the 37 pearls?

A. Most assuredly, because the time and expense in getting them together would make them more valuable.

Q. What would you say, assuming that this collection of 37 pearls had been strung, as to what the effect of taking out the string would be in trade; whether they would still be considered a necklace or not?

244 A. If that pearl necklace was left in our place to be strung and the string was broken or taken out in our place, I would still consider them a pearl necklace. The very fact of the graduation and the intent would show conclusively that they were intended for a necklace, and I would consider it that way.

Q. Suppose you were shown these 37 pearls in five separate envelopes in a box, and then took them out of those envelopes; whether or not in that condition you would still regard them as a necklace?

A. I would, because——

Mr. SMITH. I move to strike out the word "because."

(No objection by government counsel.)

Cross-examination by Mr. SMITH:

Q. Mr. Galt, did I understand you to say that you had pearls matched up for a necklace in your store in Washington?

A. That I personally had them?

Q. When I say you, I mean the business.

A. Yes; we have matched pearls, sir, out of papers. They had been collected and we had them pierced and made into necklaces; yes, sir.

Q. What is the most expensive necklace that you ever made up in your store in that way—the selling price?

A. The selling price was several thousand dollars.

Q. What do you mean by several?

A. Two or three; under three.

Q. Three or under?

245 A. Less than three, if my memory is right.

Q. You say you have a man in your employ that took these out of the papers; you told Mr. Kemp that?

A. I answered the question, Did I have a man that could do that. He is a buyer of jewelry, and he would select the pearls in the papers, the same as he would a diamond for the purpose intended.

Q. Such necklaces as you have made, you testify you have a man that does that work?

A. Sometimes we have; sometimes we bought them directly from the trade.

Q. You mean that sometimes you bought them——

A. All matched and strung, and sometimes we have bought them and strung them. But for the smaller, he depends on what he finds most advisable.

Q. When you bought them for stringing them, have you bought them ready to string, or have you bought an assortment of pearls and made the collection yourself?

A. We make the collection ourselves. All the pearls, for instance, would be of a certain number of grains, and when a large number could be shown, they would be looked through and classified so as to get the same shape, and where we find that we could make a necklace and could profitably do so, we have bought them.

Q. Will you tell whether you have one particular man in your employ who, whenever such a thing as that is to be done, does it?

A. Yes, sir.

Q. How long does it take that man to do such a thing as you have described?

A. One man with his assistant, several hours for two days.

246 Q. You mean several hours one day and several hours the next day?

A. Say three, four hours one day and two hours the next day.

Q. That makes 6 hours that he can do it with an assistant?

A. Yes.

Q. Will you please tell us what is the weekly salary of the man who does that work?

A. He receives a salary per year and a pro rata share of the profits.

Q. Well, take his highest salary with profits for a year.

A. Three or four thousand dollars.

Q. A year?

A. Yes, sir.

Q. That would be his total earnings?

A. Yes, sir.

Q. Now, in any necklace that you ever made, what was the size as stated in grains of the largest pearl?

A. I could not answer this.

Q. I don't mean by memory; I mean you to give an estimate.

A. I couldn't answer, because I am not familiar enough with that data to keep it in mind.

Q. Do you do the buying for your concern?

A. Practically none of it, sir.

Q. But of course you are familiar with it and direct it, I suppose?

A. I don't direct it, sir, except sometimes. I don't say a word about it. All I do is to find that the selling of it corresponds with the buying of it, and that is as far as I care to go in it.

247 Q. As a matter of fact, do you know how your pearls are bought?

A. Yes, sir; I do.

Q. Are they bought in bunches?

A. When it is necessary. They are bought in papers when we need them, and generally we buy the mounting. We deal with few pearl goods in papers.

Q. When you say you buy them in papers, do you mean papers containing pearls of one size and quality or containing an assortment?

A. We bought mostly of one size.

Q. That is to say, you buy a paper of pearls——

A. Of one pearl, or two pearls, or ten pearls of a size, and then a lot of indiscriminate sizes for matching up different pearls; and sometimes we buy them in papers already matched for necklaces, as I explained.

Q. Then, as I understand you, you never have bought pearls in bunches?

A. In bunches?

Q. Yes; do you know what the meaning of that expression is—pearls in bunches?

A. No, sir; I have heard of pearls strung on the strand, but I never heard of pearls in bunches. I don't know about that.

Q. Do you know commercially how pearls are bought; that is to say, as to the unit by which they are bought?

A. That has changed since my time; I have had them kept by the multiple of a grain—I have forgotten the exact process. Half a dozen of my men could answer that.

Q. Where is your store?

248 A. Washington, D. C.

Q. Whereabouts?

A. Pennsylvania avenue.

Q. What is the number, please.

A. 1107.

DAVID J. FRANKEL, a witness called on behalf of the Government, having been duly sworn, testified as follows:

By Mr. KEMP:

Q. Mr. Frankel, what is your occupation?

A. Importer of precious stones.

Q. What is your firm name?
A. We are incorporated now.
Q. What is that?
A. Joseph Frankel's Sons.
Q. Where is your place of business?
A. Corner of 47th and Fifth ave.
Q. Were you formerly down on John st.?
A. Yes; 68 Nassau st., corner of John.
Q. How long have you been in business?
A. Personally, about 20 years.
Q. Was your father engaged in the business before you?
A. Yes, sir.
Q. You were then brought up in the business, I take it?
A. No, sir; I was not.
Q. What else have you done?
A. I attended principally to the financial end of the business.
249 Q. As an importer, does your company import pearls?
A. Yes, sir.
Q. In considerable quantities?
A. Quite some; yes, sir.
Q. You are a wholesale dealer, then, in pearls, or your company is?
A. Yes, sir.
Q. Can you tell me who make up the company, in a general way; you have a brother, haven't you?
A. I have a brother and there are a number of directors.
Q. And your brother is where?
A. In Europe.
Q. Spends a considerable portion of his time each year there?
A. About six months.
Q. Do you have a house in Europe?
A. We have an office in London.
Q. Do you have any personal knowledge connected with these 37 pearls here under consideration?
A. No, sir.
Q. You have heard them described here this morning, haven't you?
A. Yes.
Q. I show you a copy of the invoice of these 37 pearls and ask you to look over the different sizes as appear there, and the amount of grains in each collection.
(Witness examines invoice.)
Q. Judging from such examination as you have made of the
250 invoice, what would you say as to whether that aggregation of 37 pearls was composed of large pearls?
Mr. SMITH. One moment; I want to ask the witness some questions.
By Mr. SMITH:
Q. Mr. Frankel, the business of buying pearls abroad is attended to by your brother, Simon, isn't it?
A. Yes, sir.

Q. And the business of selling pearls here, or jewelry, or whatever you may sell is in the hands of other people besides yourself, is it not?

A. Yes, sir.

Q. You are practically an office man, are you not?

A. Well, I sell some of the merchandise occasionally.

Q. Is that usual?

A. Quite usual, yes; while my brother is away.

(The last question put by Mr. Kemp is repeated to the witness.)

Mr. SMITH. I object to that upon the ground that the size of the pearls has been testified to here and we don't need to have any conjecture about it by the witness; and I don't think we need the speculation of this witness as to the size of these pearls.

Mr. KEMP. These being unusually large pearls, the process of selection as to color must necessarily be more limited than in the
251 smaller sized pearls. That is what I want to get at.

Mr. SMITH. It is conceded by both sides that the pearls are all large sizes.

By Mr. KEMP:

Q. Examining that paper, would you say that the pearls of that collection were of unusually large size?

A. Yes, sir; especially the centers. I don't know about the others; the others would not be so large. The one of 52¼ and 1-16 and those weighing 236¼, and all but the last sizes, the 12 weighing 214, would be considered quite large sizes in the trade.

Q. Would that aggregation as an aggregation be regarded as large-sized aggregation in the trade?

A. Yes, sir.

Q. Would it or would it not be difficult to match, as to color, pearls of the sizes mentioned on that invoice?

Mr. SMITH. I object to that on the ground that there is not a scintilla of testimony here that this witness ever matched pearls.

Mr. KEMP. I will qualify him if Mr. Smith thinks he does not know.

Q. Mr. Frankel, you will have to tell a little more particularly, if you will, your qualifications. Have you had any personal contact with the buying or the selling of pearls?

A. Not with the buying, but with the selling.

Q. With the selling you have had?

252 A. Yes, sir.

Q. Have you had anything to do with selling matched pearl necklaces?

A. Yes, sir.

Q. And matched pearls generally, have you?

A. Yes, sir.

Q. Have you had anything to do with the matching of the pearls yourself?

A. No, sir.

Q. They have been matched under your supervision or your place of business?

A. In my place of business.

Q. And exposed for sale as matched pearls or as a matched necklace in your place of business?

A. Yes, sir.

Q. Have you such pearls in your place of business now?

A. Yes.

Q. And is your business one of large proportions as compared with other pearl dealers here in town?

A. I think so.

Q. One of the largest, is it not?

A. I believe so.

Q. Would you say that you are familiar with the processes of matching and the things that have to be done in the way of matching pearls?

A. I do; yes, sir.

Mr. SMITH. I withdraw the objection.

(Question repeated to witness, as follows:)

Q. Would it or would it not be difficult to match, as to color, pearls of the sizes mentioned on that invoice?

253 A. Would it be more difficult to match than smaller ones, you mean?

Q. Yes.

A. They would.

Gen. Appr. SHARRETTS. Would it be more difficult to get pearls of that size, whether you intend to match them or not?

The WITNESS. Yes, sir; that is very rare, and that is what enhances their value.

Q. And is their rarity a question of size largely?

A. Well, they are rare when they are a fine quality.

Q. Now speaking of these 37 pearls as having been drilled and assuming them to have been matched as to size and color, and actually strung on a cord, would you say that that would constitute a necklace?

Mr. SMITH. I object to that part of the question which contains the words actually strung on a cord.

Mr. KEMP. There is testimony to the effect that they were strung on a silk cord; your own witness testified to that.

A. Yes; but before I would make an answer to that, I would rather see the article and then I would be able to tell whether it was a necklace. One man may match a necklace and it may not be a necklace; but assuming that they are all matched and they graduate right, why then they constitute a necklace.

254 (The question is repeated to the witness.)

A. Yes, sir.

Q. Would the fact that the cord was taken from such a necklace change the article and make it a different article, or would it still be a necklace?

A. Do you mean if these pearls were laid out and the cord taken out, would it make any difference?

A. No.

Q. In your judgment it would still be a necklace?

A. Yes.

Q. Assuming that this collection of 37 pearls had been matched as to size and color and strung, and the string taken out, the pearls being brought over in five packages in a box, what would you say as to whether those pearls were still a necklace or not?

A. Were they the same identical pearls?

Q. Yes.

A. If they were matched up again it would be the same thing.

Gen. Appr. McCLELLAND. Would the fact that they had been unstrung and put in five separate packages, the aggregation being still together with the exception of being separated into different papers, alter the fact, in your mind, that they were still a necklace?

The WITNESS. No.

Cross-examination by Mr. SMITH:

Q. If you saw a box containing five different papers of
255 pearls, one in one paper, three in another, four in another, and five in another, would it in any way establish that they had been a necklace?

A. Not unless they had been put together.

Q. If you found a lot of pearls in papers containing 1, 2, 3, 5, 8 or a dozen pearls, loose in papers, would you call these pearls pearls strung?

A. No, sir.

Q. Would you call them pearls set?

A. No, sir.

Q. Would the trade call them either one of those things?

A. No, sir.

Q. Do you know Mr. Ludwig Nissen?

A. Yes, sir.

Q. Is he a large dealer in pearls?

A. Yes, sir.

Q. If you hadn't seen a lot of pearls and Mr. Ludwig Nissen told you that he had seen them, and that they were so badly matched that he would not be willing to use them together as a necklace, would that opinion command your confidence in view of his position in the trade?

Mr. KEMP. I object to that as immaterial, irrelevant, and incompetent.

(Objection sustained.)

Q. Mr. Frankel, does your firm import collections of pearls?

A. We import pearls. What do you mean by collections?

Q. Well, a collection suitable for use as a necklace?

A. Yes, sir.

Q. Has it been doing so for some time?

256 A. Yes, sir.

Q. Did you ever pay 60 per cent duty on them?

A. No, sir.

Q. Were you ever asked to pay 60 per cent duty on them?

A. No, sir.

Gen. Appr. McCLELLAND. Were they sold before importation or after?

The WITNESS. No, we sold them here.

By Gen. Appr. SHARRETTS:

Q. Mr. Frankel, I understood you to say in your testimony that a pearl weighing 50 grains was an extraordinary large sized pearl?

A. Yes, sir; if it was a round pearl.

Q. If it was an irregular shape, it wouldn't be so uncommon, but a well formed, round pearl of that size would be extraordinary?

A. Yes, sir.

Q. With regard to half a dozen pearls weighing approximately 40 grains each, they wouldn't be so uncommon?

A. What we consider uncommon is above 25 grains, if it is round; we consider it large and rare.

Q. If you get below that, they are ordinary commercial articles, are they?

A. Yes, sir.

Q. If you had one pearl of 50 grains and 6 smaller pearls, and you want to form a necklace, would you select smaller pearls to match those six?

A. Yes.

257 Q. And if you secured a sufficient number of smaller pearls to match the six and the one larger one, then you would regard it as a necklace?

A. Yes, sir.

Q. Now, we are told that the sizes were all right, but they did not match in color. Would you think that that was still a necklace?

A. There are so many opinions——

Q. I am asking you what is your opinion.

A. Some people would pick out a necklace that we wouldn't think was a good necklace, and still they wouldn't be willing to break that up.

Q. Would you consider 37 pearls that were drawn together and which the party wanted to sell in that lot—would you consider that a necklace unless they were matched as to color?

A. No, I wouldn't consider that a necklace.

By Mr. SMITH:

Q. Referring to the one pearl that weighed 52 and some odd grains and the six pearls that weighed 236¼, are such pearls as that in large demand in the trade; I mean the trade that deals in large things?

A. Last year they were so rare they couldn't be got; they are not so valuable to-day.

Q. So about a year ago were they in great demand in the trade?
A. Not as large as that. No, I don't think so.
Q. If a man here in the same business that you say you are were arranging pearls here to make a necklace, wouldn't such pearls as these 37 pearls be very desirable for a man who was anxious to make such a collection?
A. They would.
258 Q. And wouldn't he give pretty large prices for them?
A. Yes, sir.

By Mr. KEMP:

Q. Assuming, Mr. Frankel, that this collection had been together for three or four years, that it was ultimately sold for $360,000, that the pearls were large, would you say that the fact that they did not match exactly or as well as a smaller aggregation in color would destroy them as a necklace?

Mr. SMITH. I object to that on several grounds. First, there isn't any proof here that these 37 pearls as 37 pearls have been together for a long time at all; on the contrary, there is proof here that originally it was 43 pearls, and that these 37 were left out of the 43. I further object on the ground that it is calling for a purely speculative opinion of this witness in answer to a hypothetical question.

(Objection sustained.)

Q. Assuming that a necklace was graduated, of the size of pearls that you have seen, would it be more difficult to get such a collection together as to color, on account of the size, matching them as to color, than it would be as to a smaller collection in size?
A. It would.
Q. Would you say, then, that the question of color in a collection of that size was more important than the size of the pearls?
A. The color.
259 Q. You think the color would be more?
A. Yes.
Q. Assuming them to have been entered at $220,000 for 37 pearls, would you think that that indicated they had been matched as a necklace?

Mr. SMITH. I object to that as purely hypothetical.

(Objection sustained.)

WILLIAM B. TREADWELL, a witness called in behalf of the Government, having been duly sworn, testified as follows:

By Mr. KEMP:

Q. Mr. Treadwell, what is your occupation?
A. Examiner of precious stones for the port of New York.
Q. How long have you been such examiner?
A. Three years and a half.
Q. What was your occupation prior to that time?
A. Thirty-three years in the occupation of precious stones.
Q. Were you formerly connected with Tiffany & Co.?

A. With Tiffany & Co. for about 15 years originally. I went there as cash boy and from that time I have been from one firm to another, and then have been back to Tiffany & Co.

Q. Do you remember seeing this aggregation of 37 pearls?

A. I do, Mr. Kemp; yes.

260 Q. State in your own way just what you saw about them, how they came in your office, and what was done.

A. Of course you understand that my predecessor returned those pearls.

Q. Your predecessor was Gen. Mindil?

A. Yes.

By Genl. Appr. McClelland:

Q. Just state what you saw of them from personal observation.

A. I found five papers of pearls and I weighed them to verify the weights.

By Mr. Kemp:

Q. Verify what weights; invoice weights?

A. The invoice weights, yes, sir; and the paper weights.

Q. Did you find that they were of the same weight or substantially the same weight as the invoice weight?

A. Absolutely; yes, sir.

Q. What description can you give of them as to their graduation in size or color, or whatever you have to say on that?

A. No description whatsoever.

Q. Did you find that they were of a size suitable for graduation?

A. We found that there were 37 pearls, and they were in five papers, if my memory serves me right; they might have been in seven.

Q. What about them as to their color; did you take them out on the table and look at them and have them together as a collection?

261 A. No; we did not. We were only looking at the value.

Q. What did you do after that?

A. Then we immediately assumed that there was a very fine aggregation or a lot of pearls.

Q. Now state what you noticed with reference to their matching, if they did match, as to color.

A. Of course we appraise pearls just as we find them—as we do diamonds—as we find them in the separate packages. But when we find diamonds of very large value, or pearls, we immediately assume that it is a larger value than we usually have, and we might possibly assume that they were going into one piece of jewelry. Otherwise we don't separate or do anything but pass them in the papers just as they are found, which we did in this case.

By Genl. Appr. Sharretts:

Q. Based upon your expert knowledge, having been with Tiffany, would it be customary where you had 37 very fine pearls to try and sell them in one collection so as to get rid of them in one lot and make a big sale? Would that be the usual course?

A. I didn't get that.

Q. If you have an aggregation of very valuable pearls wouldn't it generally be done that they would be sold as or called a necklace, so as to sell them in one lot and make a big sale, rather than sell each piece separately?

A. Yes, sir.

By Mr. KEMP:

Q. Now, taking these 37 pearls, did you do anything with
262 them when you had them with reference to examining them for the purpose of determining whether they had or had not been matched in any way?

A. No, Mr. Kemp.

Q. You didn't put them together, or try to put them in a line or row to see whether——

A. No, sir; never.

Q. Can you give us any information as to whether they matched at all as to color?

A. That would be an individual opinion.

Q. Well, as an examiner that is all I want to ask you.

Genl. Appr. SHARRETTS. Within the understanding of the trade, he asked you whether you would consider those pearls as having been matched well as to color?

The WITNESS. Now, Mr. Sharretts, you can't pin me down to that, because we had them in five different papers.

Genl. Appr. SHARRETTS. Then your answer would be——

The WITNESS. No, Mr. Sharretts; you can't pin me down to that, because I can't answer.

Genl. Appr. MCCLELLAND. Did you make such an examination of this aggregation of 37 pearls as would enable you as an expert to determine whether they were matched so as to be suitable to be made into an expensive necklace, as to color?

The WITNESS. No, sir; we did not.

By Mr. KEMP:

Q. Have you stated all you did, Mr. Treadwell?

A. No; I haven't stated all that I did.

263 Q. Well, do you think of anything else that you did with reference to these pearls?

A. You people are asking specific questions.

Q. Give us any information you have relative to this necklace.

Mr. SMITH. I object to this question in any such form as that.

Q. Have you stated to us all that you did as an examiner connected with that collection of pearls?

A. I think, Mr. Kemp, that that is all that we did, any more than the opinion or the belief that it was certainly made up as a necklace.

Genl. Appr. MCCLELLAND. Did you do anything more in the examination of these pearls than to simply test them for the purpose of comparing the invoice weights?

The WITNESS. No, we did not.

Genl. Appr. SHARRETTS. That is, the weight and value?

The WITNESS. The weight and value, of course.

Q. Did you do anything with reference to ascertaining their value?

A. No; but the value does not cut any figure here.

Q. Now from your experience as an expert, if you are, what would you say as to whether those pearls were suitable for a necklace?

A. It is no question but what they were suitable for a necklace, Mr. Kemp.

Q. State whether or not the fact that they were drilled and of the size that they appeared to be, made them suitable for stringing as a necklace.

264 A. They were drilled; they were graduated, and the sheen and everything made them a necklace; no question about that.

Mr. SMITH. I move to strike out the statement of this witness that the qualities that he noticed in these articles made them a necklace.

(Motion overruled.)

Q. You are familiar, are you, with pearl necklaces?

A. Yes, I am.

Q. And have been for a good many years past?

A. 33.

Q. Do you know what are the requisites of a pearl necklace so far as graduation?

A. I really believe I do; yes, sir.

Q. And the color as well; that is one of the characteristics, is it?

A. Yes, sir.

Q. Would you say that these 37 pearls being large pearls, it would be more or less difficult to match them as to color on that account?

A. It would not be very difficult in this particular lot, no.

Q. But as a general proposition?

Mr. SMITH. I object to general proposition, because we are dealing with a particular lot.

Q. How long did you have this particular lot of 37 pearls in your observation in the way of inspection?

A. Not very long; it doesn't require a long time.

265 Q. Mr. Mindil was there with you?

A. Mr. Mindil was passing it with me.

Q. When you speak of "we," you include Mr. Mindil?

A. Yes, sir; I do.

Q. And no other being in the office?

A. No, sir; not at all.

Q. And having nothing to do with the valuation or classification of these pearls?

A. That was all.

Q. Could you tell us anything about the color of these pearls—as to what the general color was?

A. No, sir; and nobody else could.

Q. You saw from their appearance that they were evidently valuable pearls, did you?

A. Well, Mr. Kemp, the thing that directed our attention first was their value.

Q. And that you ascertained from what source?

A. From the entry.

Q. Then you actually weighed them to see if the weight corresponded with the weights in the invoice, did you?

A. Well, naturally, when you have got an invoice with a large value——

Genl. Appr. McClelland. Did you or did you not?

The Witness. Yes; we did, sir.

Q. So far as your and Mr. Mindil's valuation was concerned, were you satisfied that they were worth as much as they were invoiced at?

Mr. Smith. Objected to; whether they were worth as much
266 as that is immaterial. They were invoiced at that and paid duty on that.

(Objection sustained.)

Q. Were these 37 pearls that you saw similar to pearls which would be used in a pearl necklace or as an article of jewelry?

Mr. Smith. Objected to as calling for the opinion of this witness as to similarity.

By Genl. Appr. McClelland:

Q. Did you make such an examination of this aggregation of 37 pearls that will enable you to say, as an expert, whether they were suitable to be made into a necklace?

A. I should like to say to this board that an aggregation of that kind, of that value, and of that beauty and of that sheen, and of that character and of that aggregation, that they could not be intended for anything else. As an individual I make that statement.

Cross-examination by Mr. Smith:

Q. Mr. Treadwell, you testified that "we"—that is, you and Gen. Mindil—examined this lot of pearls; is that right?

A. Yes, sir; that is right.

Q. Was that a usual or unusual proceeding on your part?

A. Very usual.

Q. For how many years had you been examining precious
267 stones and pearls with Gen. Mindil when they were before the appraiser in your division for official action?

A. About three years, I think, Mr. Smith.

Q. Gen. Mindil, since the time of the examination of these pearls, has discontinued his connection with the service, has he not?

A. So I understand; yes, sir.

Q. And are you now the examiner of pearls in this appraiser's department?

A. One of them; yes, sir.

Q. Have you an assistant?

A. Why, yes, sir; we have.

Q. Does the assistant that you have now occupy the same relation to you that you did to Gen. Mindil while he was there?

A. Practically; yes, sir; only I think more forcibly.

Q. Will you state whether you and Gen. Mindil examined this lot of pearls in the same way that you had theretofore and that you have since examined other lots of pearls, or in a different way?

A. I think in the same way, Mr. Smith; I might qualify that, possibly not in the same way.

Q. I mean, generally speaking, of course.

A. Well, I take Mr. Rosenberg more into my confidence than Gen. Mindil did with me.

Q. Other than in the respect that you have just stated, the examination was the same as you have made since, and it was precisely the same as you and Gen. Mindil had made theretofore?

A. Practically.

Q. Did you see the return that Gen. Mindil made on the invoice?

A. I did not.

Q. Did you know how he returned them?

268 A. I knew, but I didn't see it.

Q. You mean that you did not actually read it on the paper?

A. No, sir.

Q. But you knew that Gen. Mindil returned these as drilled pearls at 10%?

A. He didn't return them as drilled pearls.

Q. Well, what was the exact thing?

A. Pearls, 10%.

Q. Did you concur in that report?

A. I had no reason to because I had to authority to.

Q. Did you express any different from it?

A. I had no authority.

Q. I asked you whether you concurred in that return in your report?

A. I certainly didn't object to it.

Q. If Gen. Mindil had been away and you had made that report, you would have made a different report from that which he made?

A. No.

Q. Is the same true of your official action since that time?

A. I think so.

By Mr. KEMP:

Q. In other words, I take it that you simply acted on these pearls and on the invoice as they came to you; you had heard nothing of the history of the case at that time?

A. Nothing at all; we are acting every day in the same way.

Q. Do you frequently have importations coming through

269 under your observation, that such an examination as you give them satisfies you that they are parts of necklaces?

A. Well, yes.

Q. Do you wish to state, or are you willing to state, that so far as the passing of this merchandise was concerned, you felt bound to one of the decisions as you understood it?

Mr. SMITH. I object to that question absolutely.

By Gen. Appr. SHARRETTS:

Q. Suppose you had not concurred in the judgment of Gen. Mindil, would you have been authorized to make a dissenting report on that paper?

A. I should have been authorized by stating it to Mr. Nathan, our assistant appraiser.

By Mr. SMITH:

Q. As a matter of fact, did you do that?

A. Does the record show that I did it?

(Case closed. Briefs to be submitted on or before May 25th. Counsel for the importer consents to the witness Goodfriend's testimony being stricken from the record, it being impossible for the Government to cross-examine him on account of his absence.)

270 *Decision of the board.*

(T. D. 28246—G. A. 6617.)

UNITED STATES GENERAL APPRAISERS,
New York, June 14, 1907.

In the matter of protest 251326 of Bernard Citroen against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers).

SHARRETTS, General Appraiser: On the 11th of June, 1906, the protestant in this case imported into the United States 37 drilled pearls, divided into five lots. Each lot was unstrung and inclosed in a separate paper. In his advisory report to the collector, the appraiser returned the merchandise as "drilled pearls—10 per cent." The collector, however, disregarded the appraiser's report, and classified the articles as pearls set or strung, or jewelry, at 60 per cent ad valorem, under paragraph 434. The importer claims that the pearls in dispute are properly dutiable at 10 per cent ad valorem by similitude under paragraph 436 of the present tariff act.

The record in this case is voluminous, but a careful analysis of the testimony leads us to the following conclusions, viz:

Pearls of greater dimensions than the average are comparatively rare; hence it frequently requires several years' search in order to secure a sufficient number to form a necklace, all accurately
271 matched in the essential features of size, color, and luster. Such a collection thus assembled would, no doubt, command a higher price than the aggregate value of the separate pearls. On the other hand, a sufficient number of pearls, although of large size, required to form a necklace, matched as to size, but not otherwise, except a

mere regard for comparative color, could be assembled within a short time and at a price based upon the cost of each separate pearl. In order to dispose of thirty or more pearls to one purchaser, such a collection would usually be sold at a less price than the aggregate would amount to were each pearl sold separately. The evidence shows and we find that the pearls in question belong to the latter and not to the first class.

There is apparently no conflict in the testimony pertinent to the issue involved. The importer's witness who saw the pearls abroad testified that they were not matched as to color. Mr. Smith (importer's witness) expressed the opinion that they were fairly well matched, but not with such care as would enhance their value as a collection. The government witnesses (who did not see the pearls), when asked if a collection of pearls matched in color, size, and the other requisites would be of more value than the sum of the value of the separate pearls, replied they would; but inasmuch as the evidence shows the pearls in dispute were not matched as suggested in the question, their testimony on this point is of little weight.

It is shown that loose pearls bear no marks by means of which it could be determined if they had ever been strung or set as jewelry. It further appears that it is not unusual for private parties to remove a pearl from a necklace and exchange it for one more desirable, the discarded pearl taking its place in trade among the unstrung pearls.

272 The courts have invariably held that statutes must not be so construed as to lead to vague and indefinite results, and what can be more uncertain than the determination of whether one or more imported drilled pearls have been set or strung as jewelry at any time in the past? Must the liquidation of the duty upon such articles be delayed for weeks—perhaps months—pending an investigation upon this point, or will the goods be turned over to the importer upon the payment of the regular duty, the vendee being left in doubt as to whether, after the goods have been disposed of and he is powerless to recoup himself, he will be called upon to pay to the Government additional duty amounting to one-half the value of the pearls? In Tiffany v. United States (112 Fed. Rep., 672) the Court of Appeals held that pierced pearls were by similitude dutiable at 10 per cent ad valorem under paragraph 436. The dictum of the court in this case that drilled pearls once having been made into jewelry were when unstrung more similar to jewelry than pearls in their natural state is explanatory of the Government's action in this case. We feel constrained to and invariably follow the ruling of the higher tribunal, but, assuming that their view upon the point referred to was a mere expression of opinion and perhaps not founded on a well-digested consideration of the subject, we deem ourselves justified and without impropriety in venturing to discuss this phase of the case to some extent.

Under the act of 1894 (par. 337) Congress, no doubt aware of the fact that stringing pearls on silk cords in the usual manner adapting

them to be worn as necklaces was comparatively an inexpensive process, and unless they were made into jewelry by the addi-
273 tion of metal attachments, rated them for duty at 10 per cent ad valorem. The act of 1897, as the debates before Congress will show, decreased the duty on all precious stones not set or strung, in order to discourage smuggling, statistics having shown that the duty of 25 per cent ad valorem provided in the act of 1894 produced less revenue than 10 per cent ad valorem under the preceding act. It may be observed that cut diamonds are permitted entry at 10 per cent ad valorem; hence it follows that, inasmuch as the process of drilling pearls requires less skill and very much less expense than cutting diamonds, the plea of protecting American industry is not applicable. This becomes more apparent when we consider that a duty of 10 per cent on pearls and other precious stones is equivalent to at least 60 per cent on articles of infinitely less value; and, admitting that the cost of matching a sufficient number of pearls to form a necklace adds materially to their value, they have to be invoiced at their added value, and a duty of 10 per cent on that value would seem to be a sufficient amount to cover the increase in cost by assembling such a collection of pearls. Again, as a drilled pearl can be as readily smuggled as those undrilled, no plausible argument can be advanced to show congressional intent to distinguish for dutiable purposes between drilled and undrilled pearls.

The soundness of the doctrine enunciated by Judge Lacombe, that drilled pearls were not pearls in their natural state, is technically open to no argument, but it is a well-recognized principle of revenue law that Congress gives to words contained in the tariff their commercial meaning without regard to technical accuracy.

As shown by the testimony, over 75 per cent of all large
274 pearls when they first come into the hands of wholesale dealers are drilled (usually in a somewhat primitive manner by the pearl fishers); hence it would seem to follow that drilled pearls are commercially in their natural state. This is a mere inference, however, and is not founded on any testimony taken in this case.

Congress, as will be seen in the act of 1894, made no difference between pearls drilled and undrilled and even disregarded the insignificant cost of stringing. The act of 1897, however, saw fit in terms to exclude pearls strung from paragraph 436. But the language of this paragraph is significant of an intent to go no further than this. The paragraph reads:

"436. Pearls in their natural state, not strung or set, ten per centum ad valorem."

Whole pearls may be set but can not be strung. Drilled pearls, on the contrary, although sometimes set, are more frequently strung. For this reason, no doubt, Congress used the two terms "set" and "strung." It is more difficult to ascribe a meaning to the words "in their natural state." It may be these words were regarded as sufficient to avoid conflicts between pearls temporarily strung and those permanently strung. But whatever may be the reason that led to

the choice of language employed, the phrase "not set or strung" must be accepted as qualifying the phrase "pearls in their natural state," and may be regarded as a legal interpretation of its meaning, viz, that all pearls not further advanced than capable of being set or strung are constructively in their natural state and dutiable at 10 per cent. Pearls just as they come from the shell are, strictly speaking, only such as are in their natural state. Before becoming fit for
275 stringing or setting they have to undergo processes of treating and polishing; hence some deviation from technical accuracy must be made. A fair interpretation of a somewhat involved or ambiguous paragraph would seem to include all pearls in the condition in which wholesale dealers handle them, ready for setting and stringing purposes. No other interpretation gives any force to the words in paragraph 436 "not strung," inasmuch as only drilled pearls can be strung. In United States v. Downing (201 U. S., 354; T. D. 27281), the Supreme Court held that the words "not decorated" employed in paragraph 97 included only substances capable of being decorated. Applying a like reasoning to paragraph 436, we reach the conclusion that all pearls capable of being set or strung, but not set or strung, were included therein, which interpretation would unquestionably admit whole pearls polished and pearls drilled.

Turning from the proper classification for duty of drilled pearls as an academic question we hold that had these 37 pearls been assembled into a completed necklace abroad and worn as such they would, on the authority of Tiffany v. United States (supra), be dutiable as jewelry by similitude. But, as already stated, theese pearls were imported loose in separate papers, and presumptively were dutiable as pearls in their natural state by similitude. The burden of proof is on the Government to show that they had been at some time prior to importation strung as jewelry. The evidence fails to establish the fact. It is true that for several years these pearls were offered for sale collectively, and were even strung on silk cords, not as jewelry, however, but in order to display their desirability as a collection suitable for a necklace—a condition which the trade have testified is not unusual. It frequently happens that several firms furnish one
276 or more pearls, and the collection of pearls thus formed are strung for display and offered to a possible purchaser. Should a sale not be effected the pearls are returned to their respective owners. In our opinion this is not sufficient to make such a chance collection of pearls jewelry, especially if, as in the present case, there has been no enhancement in their value by reason of a careful selection and matching as to size, color, and luster.

In accordance with the views herein expressed, and on the authority of Tiffany v. United States (supra), and Neresheimer v. United States (136 Fed. Rep., 86, T. D. 25876), we hold that the pearls in this case are dutiable by similitude at 10 per cent ad valorem under paragraph 436 and sustain the protest, the collector's decision being reserved.

WILBUR T. LUNT,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

277 *Dissenting opinion.*

McCLELLAND, General Appraiser: I am unable to concur either in the reasoning or the conclusion of the majority of the board in this case. If the opinion of my colleagues correctly sets forth the law, then Congress has left the door so wide open that it would be difficult to imagine a condition under which an experienced trader would import in the United States pearls in such form as to entail the payment of duty thereon at a rate higher than 10 per cent ad valorem. I cannot believe that it was intended by Congress that an aggregation of pearls, such as that here involved, which may have taken years to collect, grade, and match as to size and color, and which for several years before importation had been held intact and frequently offered for sale, if not as a necklace, at least as a very valuable collection of pearls, so arranged as to be made into a very high-grade pearl necklace, should be admitted to entry at the rate of duty provided for pearls in their natural state.

I have carefully considered the construction of the law laid down by the United States Circuit Court of Appeals in Tiffany v. United States (112 Fed. Rep., 672), and Neresheimer v. United States (136 Fed. Rep., 86; T. D. 25876), and am forced to the conclusion that what was lacking in those cases to warrant the Government's action in assessing duty at the jewelry rate of 60 per cent is supplied by the record here. This may best be illustrated by the court's reasons for holding that the pearls in neither the Tiffany nor Neresheimer cases were subject to the higher of duty.

In the Tiffany case, Judge Lacombe, writing for the court, said:

278 "The goods in suit were not 'jewelry,' but were loose pearls of various sizes, qualities, colors, and shapes, not set or strung, and not matched or selected with a view to be then set or strung, and not adapted for such purpose in their then condition, but to be put into the general stock of pearls of the importer, for such general use of pearls as the demands of the importer's trade should thereafter require."

Thus it appears that the only particular in which the Tiffany pearls as a collection compared with the pearls involved in this case is that they were drilled. They were neither set nor strung, matched or selected with a view to being set or strung, and were only imported to be put into the general unassorted stock of the importer.

Substantially the same condition controlled in the Neresheimer case. In that case Judge Lacombe also wrote the opinion, and the following quotation therefrom shows the issue to have been in all essential particulars the same:

"They were of different sizes and not at all of the same color. They were so numerous that in each lot there were pearls which closely matched each other in size. But the test suggested in the Tiffany case is not such an assortment and selection as brings together a lot of pearls, each of which is so well chosen for luster, size,

and color that it will command a higher price. The assortment and selection must be such as to produce a collection of pearls similar to the collection found in the articles of jewelry known as necklaces or strung pearls, where time and skilled labor have been applied
279 to produce not merely a collection, but an aggregation such that the string of pearls thus produced is worth more than the aggregate values of the individual pearls composing it."

It also appears that the Neresheimer pearls were so imperfectly drilled that they had to be rebored, and that in addition some of them had to be repolished. And even after such reboring and repolishing it was shown that they went into the general stock of dealers who purchase them for making up different articles of jewelry.

The conditions presented by the record as to the pearls in this case are very different. The evidence shows that for several years before importation they had been, after being carefully selected, held intact and offered for sale, if not as a necklace actually made up ready for wear, as such an aggregation as was ready and suitable to be made, by reason of their graduation in size and harmony of color, into a necklace of great value. As such they had been displayed abroad, actually strung upon a silk cord, to several of the witnesses and offered for sale to them. It also appears that in such condition they had been shown and offered for sale in Paris to one Leeds and his wife, and that there were actual negotiations looking to the purchase thereof by the said Leeds. While the inference is not justified that there was an actual sale thereof in Paris to Mr. Leeds, it nevertheless is not open to question that they were subsequently sent to the United States by special representative of the exporter, who either directly or through a third party ultimately sold them to the said Leeds as a sequence of the Paris negotiations. It is shown by the invoice and confirmed by the record that, as imported, the pearls were loose and placed in
280 five separate packages with as many different values aggregating in United States currency $220,000; but this, in my judgment, does not alter the alternative fact that the aggregation had either been actually made into the form of a completed necklace before importation or had been so selected and strung as to constitute it a necklace. There is no pretense that the pearls were not so matched before importation as to be especially for a necklace, and the issue in this case is further distinguished from that in the Tiffany and Neresheimer cases in that it does not appear that these pearls had to be rebored or repolished, nor that they became after importation a part of a general stock of pearls to be made up into various articles of jewelry. On the contrary, it affirmatively appears that they were brought into the United States in condition ready for stringing into a necklace and were actually sold for that purpose.

It is not to be overlooked that the burden of proof rested on the importer to establish his contention, and in this, in my opinion, he has utterly failed.

To hold that such an aggregation of pearls may only be subject to the rate of duty provided for pearls in their natural state would be

equivalent to saying that no collection of pearls, no matter what had been their past history or for what purpose they have been selected, need ever be subjected to the rate of duty provided for articles of jewelry, for whenever it was desired to import pearl necklaces which as such would be articles of jewelry and subject to duty at the rate of 60 per cent ad valorem, all that would be necessary to do would be to remove the pearls from the gold clasp and silk string, of comparatively infinitesimal value, and import the pearls loose,
281 subject to duty only at the rate of 10 per cent ad valorem. See G. A. 5013 (T. D. 23338) and cases therein cited.

The following facts have, in my opinion, been clearly established by the evidence:

1. That because of the unusual size of some of the 37 pearls involved they were the more difficult to grade as to size and match as to color.

2. That before importation the said 37 pearls had been carefully selected, graded as to size, and matched as to color, especially for a necklace.

3. That the said aggregation of 37 pearls was of greater value than the total of the separate values thereof.

4. That before importation the said 37 pearls had been actually strung and offered for sale in the form of a necklace.

5. That after importation it was unnecessary to rebore or repolish any of said 37 pearls before making them into a necklace.

6. That after importation the said 37 pearls were sold to one Leeds, in the actual condition imported, as and for a necklace.

Said pearls were therefore dutiable at the rate of 60 per cent ad valorem under the provisions of paragraph 434, as assessed by the collector, and the protest should therefore be overruled.

CHAS. P. MCCLELLAND,
U. S. General Appraiser.

282 *Order extending time for taking and returning further evidence.*

At a stated term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the United States Court rooms in the city of New York, on 4th day of November, in the year of our Lord one thousand nine hundred and seven.

Present: The honorable E. Henry Lacombe, circuit judge.

THE UNITED STATES *vs.* BERNARD CITROEN. } Suit No. "A" 4974.

On reading and filing the annexed affidavit of J. Osgood Nichols, assistant U. S. attorney, and on motion of Henry L. Stimson, U. S.

attorney, and attorney for the collector of customs at the port of New York, it is

Ordered that the time for taking and returning such evidence as may be offered by the said collector, or by the said importer, in this cause, pursuant to the order of this court, dated August 27th, 1907, be and the same is hereby extended ninety (90) days from the date hereof.

E. HENRY LACOMBE,
U. S. Circuit Judge.

283 *Affidavit.*

United States Circuit Court, Southern District of New York.

THE UNITED STATES *vs.* BERNARD CITROEN. } No. "A" 4974.

STATE OF NEW YORK, *County of New York, ss.:*

J. OSGOOD NICHOLS, being duly sworn, deposes and says:

That he is an assistant United States attorney for the Southern District of New York, and has charge of the above entitled action; that this action was brought to recover the balance of duty paid upon 37 drilled pearls constituting a necklace and entered and passed at ten per cent as drilled pearls by similitude under paragraph 436. Subsequently, upon information that the pearls constituted an article of jewelry and were imported as such, the merchandise was assessed at sixty per cent. under paragraph 434, and suit was instituted June 22, 1906, for the recovery of additional duties at said rate of sixty per cent. A copy of the complaint was duly served in said action July 10, 1906, and defendant's time to answer was extended from time to time at defendant's request until October 20. The Circuit Court of Appeals having, in the case of United States v. Tiffany, held that payment of the duties assessed was a condition precedent to

284 contesting the correctness of the collector's decision, the defendant's attorney requested that the action be discontinued in order that he might pay said duties and protest under provision of section 14 of the customs administrative act.

Privilege of so discontinuing, making payment, and contesting the correctness of the collector's decision was granted to the defendant pursuant to the direction of the Treasury Department, and on April 8, 1907, the defendant, Citroen, paid the excess of duties assessed, amounting to $110,335, and the action was discontinued by the Government on April 10, 1907;

That the importer thereafter filed a protest before the Board of General Appraisers which resulted in a decision by the board by a majority opinion that the merchandise was dutiable at the rate of

10 per cent. by similitude under paragraph 436 and a reversal of the action of the collector. Thereupon an appeal was taken by the Government to the Circuit Court, in which the return of the board was filed Aug. 9th, and an order of reference was filed August 27;

That it was impossible to take evidence in this court at that time, owing to the absence in Europe of W. Wickham Smith, attorney for the protestant, and the hearings to take testimony were postponed until his return, which, as deponent is informed and believes, was on or about October 1st;

That prior to the return of said W. Wickham Smith, and as deponent is informed and believes, during the month of September, 1907, Mrs. Leeds, on whose account the necklace in question was, as deponent is informed, purchased, and who is a material and necessary witness, without whose testimony the Government can not safely proceed to trial, sailed for Europe and is now abroad; that the
285 time within which to take further evidence before the referee expired October 26; that deponent has been unable to obtain by stipulation an extension of this time for more than ten days, which will expire November 5, 1907;

That this case is a very important one, and it is the intention of deponent to examine several witnesses in behalf of the Government, and it will be impossible to prepare the case for trial without the testimony of said Mrs. Leeds;

That the Government was not aware of the intention of Mrs. Leeds to sail for Europe until the day prior to her departure, when it was impossible, with the utmost diligence, to obtain her testimony. As deponent is informed by the solicitor of customs in charge of the trial before the Board of General Appraisers, that there are a large number of these cases and that important evidence can now be obtained which was not available at the trial before the board;

That the case is a very recent one, and that no adjournment has been requested by the Government other than such as may be necessary to obtain the testimony of the said Mrs. Leeds;

That deponent was ready and anxious to proceed with the hearing in this case at all times from the date of the filing of the order of reference, to wit, August 29, 1907, until the departure of Mrs. Leeds for Europe, and that the sole reason why no hearing was had at that time was owing to the absence of said W. Wickham Smith in Europe;

That this case is a very recent issue, and that in view of the indulgence which has been accorded to the importer in this case and the permission accorded to him to make a protest and try the issues herein before the board, notwithstanding the fact that the
286 decision of the collector had become final and conclusive by reason of his failure to pay the duties assessed herein, no hardship will be imposed upon the protestant by the granting of an order extending the time of the United States in which to take the testimony of said Mrs. Leeds.

Deponent therefore prays that an order be granted herein extending the time of the United States in which to take testimony herein ninety days from the date hereof.

J. OSGOOD NICHOLS.

Sworn to before me this 4th day of November, 1907.

FREDERICK L. CAMPBELL,
Notary Public, Kings County.

Cert. filed in N. Y. County.

287 United States Circuit Court, Southern District of New York.

THE UNITED STATES
vs.
BERNARD CITROEN. } No. 4974.

To the Circuit Court of the United States for the Southern District of New York:

The undersigned, a general appraiser, under the act of June 10th, 1890, to whom it was referred by this honorable court by an order made August 27, 1907, to take further evidence in the above-entitled matter, do hereby return such further evidence taken by me pursuant to such order.

Dated, New York, February 7, 1908.

HENDERSON M. SOMERVILLE,
United States General Appraiser,
as an Officer of the Court.

288 *Further evidence.*

United States Circuit Court, Southern District of New York.

BERNARD CITROEN
vs.
THE UNITED STATES. } No. 4974.

NEW YORK, *January 31, 1908.*

Before Hon. H. M. Somerville, as officer of the court.

Present: J. Osgood Nichols, esq., assistant U. S. attorney, and John A. Kemp, esq., solicitor of customs for the United States.

W. Wickham Smith, esq., for the importer.

It is hereby consented by counsel for the respective parties herein that this testimony shall be taken before Hon. H. M. Somerville, one of the U. S. General Appraisers, as officer of the court.

MILTON P. BAGG, called as a witness on behalf of the United States, being duly sworn, testified as follows:

Examined by Mr. KEMP:

Q. Your place of business?

A. 452 Fifth avenue.

Q. Are you with a firm; if so, what is the firm name?
289 A. Bagg, Perine & Co.
Q. What is your occupation?
A. Dealer in precious stones and pearls.
Q. And you have been for how long?
A. Thirty years, possibly.
Q. Do you have any other place of business than the one you have just given, or your firm?
A. No, sir.
Q. You haven't an office in Paris or elsewhere?
A. No, sir.
Q. Do you go in the pursuit of your business frequently to Paris?
A. Yes.
Q. Were you in Paris this past year?
A. Yes, sir.
Q. About what time did you go?
A. I went in April, I think; returned in July.
Q. You were there nearly three months?
A. Yes.
Q. Is that your custom to do that about once each year?
A. Pretty near each year; yes.
Q. Visiting the dealers in merchandise in which you are interested?
A. Yes; to a certain extent.
Q. Are you acquainted with one Hugo Citroen in Paris?
A. Yes; I know him.
Q. How long have you known Mr. Citroen, generally speaking?
A. I should say ten years.
Q. What is his business?
A. He is a dealer in precious stones.
Q. Including pearls?
A. Including pearls. That is included in precious stones.
290 Q. And has been during all those ten years you speak of?
A. I believe so; yes.
Q. Did you at one time in his place of business see a collection of thirty-seven pearls which you in any manner identified?
A. Well, I saw a collection of pearls there, yes, a number of them; I can't swear to the time. You mean to say which I identified when?
Q. Any time within the past two or three years, we will say?
A. No; for I have not seen them since.
Q. I didn't ask you that. I ask if over there you were shown a collection of pearls?
A. Yes; I was shown a collection of pearls over there; I don't remember how long ago it was—several years ago.
Q. Did you see this same collection of pearls more than once?
A. No.
Q. Did you make any memorandum of their weight or size?
A. At that time; no.
Q. Did you at any time?

A. Well, can I explain in my own way?

Q. Yes.

A. No; I was there the—yes, I did make a memorandum of a necklace which I saw in Paris. After that it was shown me by Mr. Citroen's brother here; that is to say, he told me so, that it was the same necklace that I had seen. It was a noted necklace; that is the reason why——

Mr. SMITH. I move to strike that out. I don't know any theory on which hearsay testimony can be admitted here.

291 By the REFEREE:

Q. Who was it that told you?

A. Mr. Citroen's brother.

By Mr. KEMP:

Q. Bernard?

A. Bernard Citroen.

The REFEREE. I sustain that objection.

Q. You saw, then, Bernard Citroen, did you, with reference——

A. Bernard Citroen was in this country.

Q. When?

A. Let me see; that is four years ago, or three years, to the best of my recollection—you know I can only tell you that—this matter came up—I think it was four years ago, four or five years ago—and he had at that time a collection of imitation pearls, which he said was the facsimile of the pearls that were in a certain necklace which I had seen and which was noted in Paris. At that time, of course, I took this data, for I don't keep that in my head altogether, and he gave me at that time the weights of these pearls.

Q. Have you that memorandum now anywhere?

A. Yes; I have it, I think; I don't know whether I have got it now or not; I think I have it in my office. I will say this much, if you will permit me: This memorandum I took to the collector, and the collector told me that he verified it by the consular invoice, the weights of the center pearls especially. The collector said at that time it was acknowledged—there was no necessity, Mr. Stuart,

292 the deputy collector, told me—there was no necessity for it; it was acknowledged that this necklace—I think I had the memorandum of only the center pearls, the larger pearls, and they corresponded to the weights that were given in the consular invoice.

Q. And that consular invoice related to what, as you understood it from your talk with Mr. Stuart?

Mr. SMITH. I object to taking all this hearsay testimony about what Mr. Bernard Citroen told this witness or what this witness told the collector or what the collector told this witness. I object on the ground that the witness is giving testimony which, by his own statement, is hearsay.

The REFEREE. I sustain the objection as far as it relates to what was said by the collector, but not as to what was said by the importer.

Mr. SMITH. Then I move to strike out all of the witness' testimony which recites what was said to him by the collector or his subordinates.

Q. Were you shown the invoice by Mr. Stuart?

A. Yes.

Q. You saw the invoice yourself?

A. I saw the invoice myself.

Q. And did you look over the entries?

A. My recollection at the present time is that I did.

Q. And you saw the weights that were given there on the invoice, did you?

293 A. Yes, sir. I especially know this much, that the center pearl, on the center pearl, on the weight of the center pearl there wasn't more than a sixteenth or an eighth difference in the weights, which could very readily happen.

Q. Eighth of a grain?

A. Eighth of a grain.

Q. You remember distinctly of examining that center pearl?

A. Of examining the invoice. I remember—to the best of my knowledge, yes, I should say.

Q. This Bernard Citroen that you spoke of, did you ever meet him in Paris?

A. Yes.

Q. Do you know what his connection was with his brother Hugo?

A. Nothing except he was connected with the house; in what capacity I don't know.

Mr. SMITH. I have a motion here to strike out certain testimony upon which I would like a ruling.

The REFEREE. I sustain the objection to strike out.

Q. Mr. Bagg, if you have this memorandum which you speak of of the weights furnished by Bernard Citroen, will you produce it?

A. Yes. I will say this much, that my recollection was that my memoranda corresponded with the memoranda of these pearls that were in this necklace; that is my recollection at the present time. At least I think I can get you that memorandum.

Q. And also compared with the figures that were given on the invoice?

294 A. With the weights, you mean?

Q. Yes.

A. Yes.

Q. Did you see this in Paris more than once while you were there?

A. No.

Q. In what condition was the necklace the time you saw it?

A. It is so long ago I have almost forgotten. They were shown me, I believe, in Mr. Citroen's office, I believe, at that time.

Q. State as well as you can, to the best of your recollection, as to what you saw?

A. I saw a necklace laid out; I think at that time it was—I don't think it was strung up, I am not certain about that; of course it is so long ago I have not kept that thing in my mind.

By the REFEREE:

Q. Was it on any kind of a string, the pearls?

A. Really I have forgotten that; I couldn't positively swear whether it was on a string or not.

By Mr. KEMP:

Q. Couldn't you remember whether they were strung in any way at all or whether they were loose?

A. My recollection is they were loose at this time. I really, it is so long ago, I can't absolutely swear to it.

Q. State just how they were shown to you? Were they shown to you in a mere heap?

A. They were shown laid out in a necklace form.

Q. Graduated?

295 A. Yes.

Q. Matched?

A. What do you mean by matched?

Q. Matched as to color and luster and brilliancy?

A. They were graduated, being shown in a necklace form. The word "matched" don't signify anything so far as that is concerned.

Q. You say they were graduated and shown in a necklace form and intended to be shown——

Mr. SMITH. I object to counsel leading the witness.

(Objection sustained.)

Q. Do you remember any conversation that you had with Hugo Citroen relative to this necklace?

A. No, sir; I do not.

Q. Can you state whether you were in the office of Mr. Citroen more than once when you saw this particular collection?

Mr. SMITH. I object on the ground that the witness has three times stated that he never saw it more than once.

The REFEREE. I will allow that question to be put another time.

A. I never saw it more than once, no.

Q. Were you given figures on it by Mr. Citroen?

A. If I was, they were—I can't remember the exact figures; I have forgotten whether I was even given the figures on it; I was afterwards, you know.

Q. At what time afterwards?

A. By Mr. Bernard Citroen.

Q. That was when?

296 A. When he came over with the imitation necklace.

Q. Was this imitation necklace strung that you speak of?

A. Yes.

Q. And had clasps on it, and all that?

A. My recollection is there was a clasp; I have forgotten whether there was or not.

Q. State as best you can what your best recollection is?

A. My recollection is that this imitation necklace had what you call a clasp; but I have forgotten whether it did or not.

Q. What did Mr. Bernard Citroen say with reference to this imitation necklace as to what it represented?

A. Mr. Bernard Citroen told me that this represented a necklace that was noted; it was well known, and the history of which everybody knew, and, I say in the trade, who had anything to do with pearls; and told me this represented—the imitation represented—just exactly the sizes of those pearls; and he furnished me at that time this memorandum of weights. I will say this, my recollection is that the necklace was strung, because we had it in our office for some time; I am rather certain that the necklace was strung.

By Mr. SMITH:

Q. You mean the imitation?

A. I mean the imitation.

The WITNESS. And we had it, because we were going to show it to some party; and he gave me the price on it—I think I have
297 got that too—and the weights, etc. I think I have got that data, but I am not certain.

By Mr. KEMP:

Q. Do you recall the price?

A. No; I don't recall the price now.

Q. Do I understand you stating that this imitation pearl necklace was represented by Mr. Bernard Citroen to in all respects represent the pearl necklace that you saw in Citroen's place of business?

Mr. SMITH. I object. If Mr. Bernard Citroen said anything to him on that subject, the witness should be called upon to repeat everything that Mr. Bernard Citroen said. I object to putting his statement in the form of a conclusion which is put to the witness as a leading question on direct examination.

The REFEREE. I think that is merely calling on the witness for an interpretation of his testimony as already given. Objection overruled.

(Mr. Smith excepts.)

A. He represented that this necklace was the historic necklace—I call it historic from the fact that it was known—I will say the noted necklace that they had in Paris. And whether he said it was the same one I saw or not I can't say, because I don't know that he knew at that time I had seen it.

298 Q. You don't remember, then, whether in your conversation at that time anything was said about your having seen the necklace in Paris?

A. No; I do not.

Q. This was subsequent to the time that you did see it in Paris—at Bernard Citroen's?

A. Yes.

Q. And how long subsequent to that time would you think?

A. That must have been four years ago, I would say.

Q. Was it within a year of the time when you saw it?

A. I should think so. I can't tell you exactly.

Q. Your best impression?

A. My best impression, because—one moment; no, I think that was shown me—yes; I think that was shown me three years ago; that is my impression.

Q. Speaking of what that was shown you?

A. The imitation necklace. Of course, I can tell you better if I had the memoranda.

It is agreed between counsel that the witness shall furnish to the government counsel, if he finds it, the paper or memoranda to which he has referred in his testimony, and that the paper shall then be shown to the counsel for the importer, and that the counsel for the importer will then advise the counsel for the Government whether or not he desires the witness to be recalled for any further cross-examination.

299 Q. You speak of this necklace as a noted necklace; can you give any further testimony as to why you describe it in that way?

A. Only as hearsay testimony; that is all.

Q. Historically did it have a history?

A. You mean historically from a trade standpoint?

Q. Yes.

A. Why, yes; it was well known.

Q. How long had it been well known or had you known that it had been well known?

A. I think two years, my recollection is.

Q. That is, you mean to say two years, at that time you saw it in Citroen's place of business?

A. No; it was known, I think, when I first saw it there; I think my recollection is that it was just recently purchased or was about to be purchased. This is all hearsay.

By the REFEREE:

Q. Did you ever see the original genuine pearl necklace?

A. This collection of pearls—may I say it in my own way?—this collection of pearls here was laid out before me; of course we don't see a collection of pearls like that every day in the week, nor are they to be seen once in possibly a great many years; and of course the importance of this collection naturally was noticeable to anybody, especially a dealer in pearls. Now, when a person sees a collection of this kind and has that brought up to him as a certain collection of pearls afterwards we generally believe it is the same collection, naturally.

300 You can readily understand that no firm nor any dealer has got two collections of pearls in, I was going to say, a decade that would have practically the importance that this collection has. And the only reason that I can see, the only reason that I suppose—I am not saying that I know they were even the same collection—the only reason I suppose was because of this, of the importance of this string, with the collection as represented by Mr. Bernard Citroen, and also that they were talked about among the trade; it was the most important collection at that time on sale.

By Mr. KEMP:

Q. And what was the particular feature of this collection that you saw there which made them noted?

A. Very important and very high quality pearls.

Q. Very large pearls, were they?

A. Yes, run up very large.

Q. Large-sized pearls?

A. Large-sized pearls; very important.

Q. And individually large?

A. And individually large.

Q. And they were shown to you and offered to you, were they, or were they not, as a necklace?

A. They were shown to me as a necklace, yes.

Q. And these you are now speaking of were the original pearls over in Paris, that you are now speaking of, not the imitation?

A. The necklace I saw over in Paris; I don't know as it was the original necklace.

Q. They were all genuine pearls?

A. They were the genuine pearls.

Q. Not the imitation which you saw?

A. Oh, no, no.

301 By the REFEREE:

Q. When you examined these pearls were you contemplating the purchase of them?

A. No, sir.

By Mr. KEMP:

Q. Will you state the custom of the trade as you know it with reference to inspecting a collection of pearls similar to the pearls which you saw in Citroen's?

Mr. SMITH. This witness has already testified that when he looked at those pearls he had not the slightest intention of buying them. He has already testified that he did not make any memorandum of them at that time. He has testified that subsequently an imitation pearl necklace was shown him, at which time he did make a memorandum. Now, in view of that testimony any inquiry as to what the trade custom is in looking at pearls is irrelevant and immaterial.

Mr. KEMP. If the court please, I want to give you my ideas as to the importance and materiality of this.

By the REFEREE:

Q. Do you know of any custom of trade in reference to such matters?

A. No; I don't know of any particular custom.

By Mr. KEMP:

Q. What was your object in inspecting these pearls? If not to purchase, what was your object?

302 (Objected to as totally immaterial. Objection overruled. Exception.)

A. Because Mr. Citroen had something exceedingly fine which he would like to show me; that is all.

Q. How did you get in conversation with Mr. Citroen?

A. I went in there to look at his stock, to purchase goods, etc., to see what he had that would be of interest to me, as I would go to any other dealer. In showing me his stock, why, he brought out this collection of pearls, my recollection is.

Q. Can you recall any conversation that you had with reference——

A. Not the slightest conversation; that is so many years ago.

Q. You have got customers in the pursuit of your business to buy necklaces, or to make contracts for necklaces, have you not, at different times?

A. Let me understand that.

Q. In other words, do you keep a stock of necklaces?

A. Yes.

Q. And you buy necklaces?

A. We buy pearls and make necklaces of them.

Q. Was this collection of pearls in this condition shown you in a usual condition which a pearl necklace is exhibited by yourself or by a dealer generally as a necklace?

A. As a necklace; yes.

Q. Did you see Bernard Citroen when he was over here in June, a year ago last June?

A. Yes.

Q. Did he call on you and mention this necklace in any way to you?

303 A. No.

Q. Did you know that he had it here?

A. No; not at that time. I knew of it afterwards.

Q. How long afterwards did you know that?

A. Possibly twenty-four hours.

Q. What did you know about it in the twenty-four hours that you speak of? What facts came to your knowledge with reference to this collection?

A. I knew that this collection—let me see how can I answer that—I knew that there had been a necklace sold in Paris, I knew—I only knew it by hearsay, by somebody reporting——

Q. In the trade.

A. In a trade way. I also knew that—in a trade way, heard, knew—that there were pearls come through the custom house, an invoice of pearls, so many papers, and under the existing circumstances it didn't take me long to put two and two together to know how that came about.

Q. Through the trade did you learn that this collection of pearls came from Hugo Citroen?

A. No. All I knew, know, I supposed so; that is the only thing; I made an inference of that kind.

Q. Was the name of Citroen connected in any way with these pearls that you heard about through the trade?

A. Well, can I say it in my own way?

Q. Yes.

A. When he came in here——

By Mr. SMITH:

Q. Who?

A. Mr. Bernard Citroen.

The WITNESS. In my office some time after that, at New
304 York, 21 Maiden lane, I had had information that a necklace—this necklace—had been sold in Paris, and to whom it had been sold, and I went around to one of the dealers—shall I mention his name?

Mr. SMITH. Yes.

The WITNESS. J. Frankel's Sons, and told them that I believed that this necklace had been brought in here, and wanted to know if they had heard about it, and they said they had all information of this thing, about this necklace, cabled from Europe. Now, then, when we went down to the custom house——

Mr. SMITH. Who is "we?"

The WITNESS. Frankel.

Mr. SMITH. Which one?

The WITNESS. David Frankel and myself, and I think, one other dealer, and we saw the deputy collector, Mr. Stuart, and I told him that I had——

Mr. SMITH. One moment. So far as what he said to Mr. Stuart or what Mr. Stuart said to him after the importation of these goods, I object to it.

The REFEREE. Objection sustained to that extent.

The WITNESS. I showed to Mr. Stuart——

By Mr. KEMP:

Q. What did you hand to Mr. Stuart?

A. I showed Mr. Stuart the paper that I had—that is, the memoranda given me some time previously—some years previously—two or three years previously.

305 By Mr. SMITH:

Q. The one that Bernard Citroen gave you?

A. Yes. And Mr. Stuart said——

(Objected to.)

The WITNESS. And Stuart showed me the invoice, the consular invoice; and as I say my recollection was at that time that the weights on that corresponded—of these principal pearls—corresponded to the weights on my paper.

By Mr. KEMP:

Q. Was there anything said by Mr. Citroen at the time he showed you these pearls in Paris as to your getting a purchaser for them?

A. Well, I can't say; of course, he would like me to have sold them. He knew at that time—well, I won't say that, because I don't know. We were in the trade.

Cross-examination by Mr. SMITH:

Q. You spoke of Bernard Citroen having shown you a string of imitation pearls?

A. Yes.

Q. From such a string neither you nor anybody else in or out of the trade could have determined anything about genuine pearls, which were supposed to be represented by this imitation, except their size, could you?

A. Not a particle.

306 Q. You have yourself, you say, frequently collected pearls and made necklaces and sold them—is that right?

A. Yes.

Q. Then I assume that doing a large business, as I understand you do—and you have done that both abroad and here; is that right?

A. You mean made collections of pearls?

Q. Yes.

A. Yes; we have bought pearls over there in quantities and we have bought pearls here in quantities.

Q. And when you had bought them abroad and made them up into collections, was that making up done over there?

A. Making up done here.

Q. Always done here?

A. Always.

Q. Now, isn't it a fact that when a man has collected a lot of pearls which, applying to them his profesional knowledge and skill, he thinks make a good necklace, that he may at any time when he has seen other pearls take some out of his so-called collection and replace them by others?

A. Absolutely.

Q. Where he has concluded either their size or lustre or quality would be better than the others?

A. Yes, sir.

Q. In other words, isn't it true that dealers, a few dealers, that handle high class goods of this character, break up collections and reform them from time to time according to the material that they get hold of?

A. Yes, sir.

Q. Now, you say you have bought pearls on the other side and made necklaces here, is that right?

A. Yes, sir; that is to say, those pearls have gone into necklaces here.

307 Q. And in doing that you have sometimes bought single pearls and sometimes a number. Is that right?

A. Yes.

Q. Have you ever at any time since the year 1897 up to the present time on one or more drilled pearls that you imported into this country paid sixty per cent duty?

A. Have I ever?

Q. Yes.

A. No.

(Adjourned to Tuesday, Feb. 4, 1908, 3 p. m.)

THE UNITED STATES *vs.* BERNARD CITROEN. } No. 4974.

Hearing resumed at No. 987 Fifth avenue, New York City, February 4, 1908.

Before Hon. H. M. Somerville, as officer of the court.

Present: J. Osgood Nichols, esq., assistant U. S. attorney, for the United States.

W. Wickham Smith, esq., for the importer.

NONNIE STEWART LEEDS, called as a witness on behalf of the United States, being duly sworn, testified as follows:

By Mr. NICHOLS:

Q. Mrs. Leeds, were you in Paris a year ago last spring?

308 A. Yes.

Q. And did you go to the place of business of Mr. Hugo Citroen?

A. Yes.

Q. Were you shown there a collection of 37 pearls?

A. Yes.

Q. Will you describe in your own way the condition in which those pearls were?

A. How do you mean for me to describe in my own way?

Q. How were they arranged, the pearls?

A. I have seen them loose and I have seen them on a string, both ways; that day at Citroen's they were loose.

Q. Then you saw them at some other place?

A. Yes; I saw them at Cartier's, on the Rue de la Paix.

Q. Were they on a string at Cartier's?

A. Yes.

Q. How were they arranged on the string—in the form of a necklace?

A. Yes.

Q. Was the string arranged so that you could wear the pearls as a necklace?

A. Yes.

Q. Did you try it on as a necklace to see how it appeared?

A. Yes.

Q. Were there clasps connected with the strings so that it could be fastened together at the ends?

A. Yes.

Q. Where else did you see this necklace, if anywhere, in Paris?

309 A. I saw it in no other place but Paris, except at Cartier's and Citroen's, the two places, and at the hotel; it was brought to the hotel for me to see several times.

Q. In what condition was it when it was brought to the hotel?

A. They were brought both on the string and off the string; it was strung up at odd times, then it was taken apart and other pearls were put in and others taken out, so it was strung several times.

By the REFEREE:

Q. What hotel was that?

A. At the Hotel Ritz in Paris.

By Mr. NICHOLS:

Q. Did you wear it at any time?

A. Abroad?

Q. Yes.

A. Yes.

Q. On what occasion?

A. Oh, I wore it—I don't know any particular occasion; I wore it a great deal.

Q. When did you first see—did you see it again in this country?

A. No; I didn't see it again in this country until it was given to me.

Q. In this last summer?

A. No; it was a year ago last summer.

Q. I mean a year ago last summer?

A. Yes.

Q. At Newport?

310 A. At Newport it was given to me.

Q. Was it the same necklace that you had seen and worn in Paris?

A. I think it was; supposed to be.

Q. It was represented to you to be?

A. To be the same pearls; yes.

Q. By whom was it delivered to you at Newport?

A. It was delivered by Mr. Citroen.

Q. Did he represent that it was the same necklace that was made up that day and worn by you in Paris?

A. He said it was the same pearls that I had worn in Paris and had been delivered to me in Paris and that were given to me in Newport.

Q. Do you recall how many there were?

A. There were thirty-seven that I had abroad and thirty-seven were delivered to me in Newport; and I have six more now on the string.

Q. The six that you added since?

A. Six that I added since; so at present there are forty-three on the string.

Q. Were they offered to you for sale in Paris?

A. What? The pearls?

Q. Yes.

A. Yes.

Q. And they were shown you for that purpose, I suppose?

A. Yes.

Q. Was any price mentioned?

A. Yes.

Q. Do you mind telling what it was?

Mr. SMITH. I object to any question about the price. This is not a reappraisement case and no question is raised as to the valuation
311 of these pearls. They were imported by Citroen, passed correct by the appraiser, no appeal called by any government officer, and any question as to the price as between Cartier and Mrs. Leeds I submit is totally immaterial to any issue in this proceeding.

The REFEREE. I think that question is relevant as a matter of identification, and therefore I overrule your objection.

(Mr. Smith excepts.)

Q. Mrs. Leeds, have you any personal objection to giving this information?

A. No.

Q. At what price were they offered?

A. You mean what price they were offered? They were offered at various prices. The first time that I looked at the pearls—of course, they were changed from time to time—years, long before they were purchased, two or three years before, I saw the pearls at odd times when I have been over there, and at first, of course, they asked a great deal more than was paid for them.

Q. How much was paid for them?

Mr. SMITH. That I object to as totally irrelevant.

The REFEREE. I think that is a matter of identification and is admissible.

Mr. SMITH. There is no dispute here as to the identification of the pearls. It is conceded that the pearls that she saw in Paris are the pearls that Citreon brought in and which are the subject of this proceeding. Now, the question what this lady paid for
312 them or agreed to pay for them is absolutely immaterial to this proceeding.

Mr. NICHOLS. The Government contends that the amount paid was intended to include the full amount of the duty upon them, and the price paid is relevant to the issues in that respect, as evidence showing that the pearls were shown as a necklace and intended to be brought over in that form.

The REFEREE. I think if evidence is relevant the mere fact that a party concedes a certain thing to be true wouldn't exclude the evidence.

Mr. SMITH. I submit that it isn't relevant.

The REFEREE. I will overrule your objection

(Mr. Smith excepts.)

(Question repeated.)

Q. How much was paid for them, unless you have a personal objection to stating?

A. I have no personal objection. It was $340,000 paid for them; but that was—I turned over a string of pearls which I had on the payment, so there wasn't that much in cash paid; the pearls that I turned over to them, I think, were valued at $52,000, but I am not sure whether it was $52,000 or $54,000, but it was one of the two; and the pearls I turned over to them I had bought at Tiffany's several years before, so the duty had been paid to Tiffany. So I paid the difference between $340,000 and the $52,000, which would make——

Q. Where did you turn over this necklace in part payment?

313 A. I turned over this necklace in Paris.

Q. And the purchase was made there, wasn't it?

A. I said that I would take the pearls in America; the purchase was not made there.

Q. I mean the bargain was made there?

A. The bargain was made there, but the money was not paid.

Q. Then you did buy the necklace in Paris?

Mr. SMITH. I object to that. She has stated the facts. I object to this counsel putting inferences into her mouth. I object on the ground that it calls for an opinion or conclusion of the witness on a question of law, when the facts are already established by the evidence.

The REFEREE. If you object to it on the ground that it is leading I will sustain that; but on the ground that it calls for a legal opinion instead of a fact I will overrule that.

Mr. SMITH. I take an exception.

A. Well, the bargain was made in Paris; my pearls were turned over in Paris, and the others I was to have in America.

Q. You mean the thirty-seven pearls?

A. I mean the thirty-seven pearls I was to have in America.

Q. When were the thirty-seven pearls last shown you in Paris, Mrs. Leeds?

A. You mean when did I last see them?

Q. Yes; as near as you can recollect.

A. In May, I think, 1906.

Q. And those were the pearls that were delivered to you in Newport?

314 A. Yes. It was the latter part of May or first part of June.

Q. And those pearls were worn by you in Paris?

A. Yes.

Q. As a necklace?

A. Yes.

(No cross-examination.)

Government rests.

(Adjourned.)

Importer rests.
Testimony closed.
Dated, N. Y., Feb. 6, 1908.

315 [Copy.]

Mr. Citroen's pearl necklace.

$400,000 less 10%—$360,000. $13.73 base.
37 pearls 985 grs. 26.62 ave.
Centre pearl 53 grs.

1 centre pearl	53
1st pair	$83\frac{1}{8}$
2nd "	$78\frac{5}{8}$
3rd "	$75\frac{1}{8}$
4th "	$62\frac{3}{4}$
5th "	$62\frac{3}{8}$
6th "	$58\frac{3}{8}$
7th "	$57\frac{3}{8}$
8th "	$51\frac{1}{2}$
9th "	$50\frac{5}{8}$
19 pearls	$632\frac{7}{8}$ grs.

37 pls.	935 grs.
19 "	$632\frac{7}{8}$ "
18 pls.	$352\frac{1}{8}$ grs.

316 United Stated Circuit Court, Southern District of New York.

THE UNITED STATES
vs.
BERNARD CITROEN. } No. 4974.

It is hereby stipulated that the memorandum referred to by the witness, Mr. Bagg, in his evidence, and now inserted in connection therewith, was prepared under the following circumstances:

At the time that Mr. Bernard Citroen saw Mr. Bagg and showed him his string of imitation pearls, as referred to in Mr. Bagg's testimony, Mr. Citroen stated orally to Mr. Bagg the weights of the various pearls composing the collection represented by the imitation necklace. Mr. Bagg copied on a piece of paper the weights as given him by Citroen and pasted that piece of paper in a memorandum book used by him in his business. The present memorandum is a typewritten copy prepared by Mr. Bagg from the memorandum pasted in his book.

CURIE, SMITH & MAXWELL,
Attorneys for Importers.
HENRY L. STIMSON,
U. S. Attorney.

317 United States Circuit Court, Southern District of New York.

THE UNITED STATES
vs.
BERNARD CITROEN.

LACOMBE, Circuit Judge:

This case forcibly indicates the defects of the old practice whereby the proofs were taken in part before the Board of General Appraisers and in part before the court after the board's decision was rendered. The opinion of the two general appraisers who united in reversing the collector—the third general appraiser dissented—indicates that they would probably have decided the other way "had these thirty-seven pearls been assembled into a completed necklace abroad and worn as such." The brief additional testimony introduced in the Circuit Court exclusively establishes that proposition, and upon all the proofs the thirty-seven pearls cannot under the rules laid down by the Court of Appeals in Tiffany vs. U. S., 112 F. R., 672, and Neresheimer v. U. S., 136, F. R., 86, be classified, even by similitude, as "pearls in their natural state."

Inasmuch as this case will undoubtedly be appealed, it seems unnecessary to add anything to the discussion of the correctness or practicability of the rules for classification laid down in the earlier cases above cited except in one particular. Counsel for the importer challenges the suggestion in the Tiffany case that when there has been "a careful process of assortment and selection as to size, quality, lustre, shape, etc., which takes time and skilled labor," the
318 "string of pearls thus produced is worth more than the aggregate values of the individual pearls composing it." Reference is made to testimony to the effect that a collection of pearls will often be sold to one purchaser at a less price than aggregate would amount to were each pearl sold separately. There is nothing surprising in the circumstance that a dealer will be content with a smaller percentage of profit if he can sell thirty-seven exceptionally large and expensive pearls in a single transaction than he would expect if he had to dispose of them individually, possibly having to wait many months before all were sold. It is a mere "wholesome discount," and does not indicate that the intrinsic value of the collection is reduced by sorting, selecting, and arranging. If it were, we may be very sure that the dealers would not thus waste their time and skill and the interest on their money.

The decision of the board is reversed and that of collector affirmed.

(Endorsed:) U. S. Circuit Court, Southern District of N. Y. Filed Jun. 2, 1908. John A. Shields, clerk.

319 At a stated term of the Circuit Court of the United States of America for the Southern District of New York, held at the United States Circuit Court rooms, in the post office building in the city of New York, on the 13th day of July, in the year of our Lord one thousand nine hundred and eight.

Present: Hon. E. Henry Lacombe, circuit judge.

THE UNITED STATES, *vs.* BERNARD CITROEN. } "A" suit No. 4974.

The above cause coming on for hearing and determination before this court on the application of the collector of customs at New York, petitioner for a review of the questions of law and fact involved in the decisions of the Board of U. S. General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon, and the further evidence taken in this court pursuant to an order thereof:

Now, after hearing J. Osgood Nichols, assistant U. S. attorney on behalf of the collector for reversal and W. Wickam Smith, esq., of counsel for the said importer for affirmance, on motion of Henry L. Stimson, U. S. attorney,

It is ordered, adjudged, and decreed that there was error in said proceedings before said Board of General Appraisers, and that their decision herein be and the same is hereby in all things reversed;

320 and that the said pearls are properly dutiable at the rate of 60 per cent ad valorem under paragraph 434, Schedule N, act of July 24, 1897, or by similitude under the same paragraph by virtue of section 7 of said act.

E. H. LACOMBE,
U. S. Circuit Judge.

Assented as to form:

CURIE, SMITH & MAXWELL,
Attorneys for Importers.

(Endorsed:) A 4974. U. S. Circuit Court, Southern District of New York. The United States vs. Bernard Citroen. Judgment of reversal. Henry L. Stimson, United States attorney, attorney for U. S. U. S. Circuit Court, Southern District, N. Y. Filed Jul. 13, 1908. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

BERNARD CITROEN, PETITIONER, *vs.* THE UNITED STATES, RESPONDENT. } No. 4974.

The above-named importer, Bernard Citroen, conceiving himself aggrieved by the decision entered on the 13th day of July, 1908, re-

versing the decision of the Board of General Appraisers, does hereby appeal from said decision to the United States Circuit Court of Appeals for the Second Circuit, and he prays that this appeal
321 may be allowed, and that a transcript of the record and proceedings and papers upon which said decision was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated New York, July 16th, 1908.

Yours, &c.,

CURIE, SMITH & MAXWELL,
Attorneys for Petitioners,
32 Broadway, New York City.

It is hereby certified that the questions involved in this case, described in the anexed appeal, are, in the opinion of this court, of such importance as to require a review of the decision of this court by the Circuit Court of Appeals for the Second Circuit, and the appeal from said decision to said Circuit Court of Appeals is therefore hereby allowed.

Dated New York, July 16th, 1908.

E. H. LACOMBE,
U. S. Judge.

(Endorsed:) No. 4974. U. S. Circuit Court, Southern District of New York. Bernard Citroen, petitioner, vs. The United States, respondent. Petition and allowance of appeal. Curie, Smith & Maxwell, attorneys for petitioner, 32 Broadway, New York City. A copy of the within paper has been this day received at this office, Jul. 20, 1908. Henry L. Stimson, U. S. attorney. U. S. Circuit Court, Southern District of N. Y. Filed Jul. 21, 1908. John A. Shields, clerk.

322 United States Circuit Court of Appeals for the Second Circuit.

BERNARD CITROEN, APPELLANT,
vs.
THE UNITED STATES, APPELLEE. } No. 4974.

Now come before the justices of the United States Circuit Court of Appeals for the Second Circuit, at their court rooms in the city of New York, the said Bernard Citroen, appellant, and says that in the record of the proceedings aforesaid there is manifest error in this, to wit:

The Circuit Court erred:

1. In reversing the decision of the Board of General Appraisers.
2. In not affirming the decision of the Board of General Appraisers.
3. In holding the merchandise dutiable at 60% under paragraph 434 of the tariff act of July 24, 1897, either directly by specific enumeration or by similitude.

4. In not holding the merchandise dutiable by enumeration at 10% ad valorem under paragraph 436.

5. In not holding the merchandise dutiable by similitude under paragraph 436 and section 7.

323 6. In holding that the intrinsic value of a collection of pearls is increased by sorting, selecting, and arranging.

CURIE, SMITH & MAXWELL,
Attorneys for Appellant,
32 Broadway, N. Y. City.

(Endorsed:) No. 4974. U. S. Circuit Court of Appeals for the Second Circuit. Bernard Citroen, appellant, vs. The United States, appellee. Assignment of errors. Curie, Smith and Maxwell, attorneys for appellant, 32 Broadway, N. Y. City. U. S. Circuit Court, Southern District of N. Y. Filed Jul. 15, 1908. John A. Shields, clerk.

Know all men by these presents that I, Henry B. J. Craig, am held and firmly bound unto the United States of America in the sum of one hundred dollars, to be paid to the said United States of America, for the payment of which, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal and dated the 16th day of July, in the year of our Lord one thousand nine hundred and eight.

Whereas Bernard Citroen has prosecuted an appeal to the United States Circuit Court of Appeals for the Second Circuit to reverse the judgment rendered herein by the judge of Circuit Court for the Southern District of New York.

Now, therefore, the conditions of this obligation are such that if the above-named Bernard Citroen, appellant, shall prosecute said appeal to effect and answer all damages and costs if he fails to

324 make said appeal good, then this obligation shall be void, otherwise the same remain in full force and virtue.

HENRY B. J. CRAIG. [SEAL.]

Sealed and delivered and taken and acknowledged this 16th day of July, '08, before me.

[SEAL.]

ELY NEUMANN,
Notary Public, N. Y. County.

Henry B. J. Craig, being duly sworn, deposes and says that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

HENRY B. J. CRAIG.

Sworn to before me this 16th day of July, 1908.

[SEAL.]

ELY NEUMANN,
Notary Public, N. Y. County.

The foregoing bond is approved as to form, amount, and sufficiency of surety.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) No. 4974. U. S. Circuit Court, Southern District of New York. Bernard Citroen, appellant, vs. The United States, appellee. Bond for damages and costs. Curie, Smith & Maxwell, attorneys for appellant, 32 Broadway, N. Y. City. U. S. Circuit Court, Southern District of N. Y. Filed Jul. 20, 1908. John A. Shields, clerk.

UNITED STATES OF AMERICA, *ss.*

To the United States of America and the Collector of the Port of New York:

You are hereby cited and admonished to be and appear
325 before the United States Circuit Court of Appeals for the Second Circuit, in the city of New York, on the 15th day of August, 1908, pursuant to an appeal on the part of
filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, in a certain proceeding entitled Bernard Citroen, appellant, vs. The United States, appellee, No. 4974, to show cause, if any there be, why the decision of the United Circuit Court in the said appeal mentioned should not be reversed, modified, or corrected and speedy justice should not be done in that behalf.

Given under my hand, at the city of New York, in the Southern District of New York, on the 16th day of July, 1908.

E. H. LACOMBE,
Judge of the United States Court.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, JOHN A. SHIELDS, clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to 325, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause entitled Bernard Citroen, appellant, against The United States, appellee (No. 4974), as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 11th day of August, in the year of our Lord one thousand nine hundred and eight, and of the independence of the said United States the one hundred and thirty-third.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

326 United States Circuit Court of Appeals for the Second Circuit. No. 153. October term, 1908.

Argued December 14, 1908. Decided January 12, 1909.

BERNARD CITROEN, APPELLANT,
vs.
THE UNITED STATES, APPELLEE.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Before Coxe, Ward, and Noyes, circuit judges.

On appeal from a decision of the Circuit Court for the Southern District of New York, which reversed the decision of the Board of General Appraisers and sustained the action of the collector who levied a duty of 60 per centum ad valorem upon an importation of pearls from France in June, 1906.

W. Wickham Smith for the appellant.

J. Osgood Nichols for the appellee.

COXE, Circuit Judge. The appellant imported thirty-seven pearls valued at $220,000. The pearls were divided into five separate packages containing, respectively, one pearl, six pearls, eight pearls,
327 ten pearls, and twelve pearls. They were all loose and all drilled. The appraiser in his report returned them as pearls, with the advisory rate of 10 per centum ad valorem. The collector, however, rejected the appraiser's advice and classified them, by similitude, as pearls set or strung or jewelry, and levied a duty of 60 per centum ad valorem.

The appellant protested, insisting that drilled pearls by similitude were liable to a duty of 10 per centum ad valorem under par. 436 of the tariff act of July 24, 1897.

Paragraph 434, invoked by the collector, is as follows:

"Articles commonly known as jewelry, and parts thereof, finished or unfinished, not specially provided for in this act, including precious stones set, pearls set or strung, and cameos in frames, sixty per centum ad valorem."

Paragraph 436 relied on by the importer is as follows:

"Pearls in their natural state, not strung or set, ten per centum ad valorem."

The pearls which are the subject of this controversy had, previous to their importation, become well known in Paris and London and finally came under the control of Hugo Citroen, a brother of the importer. Negotiations for the purchase of the pearls were entered into from time to time and bids were made sometimes for the entire lot and sometimes for parts thereof. Finally they were seen by Mrs. Leeds, of New York, both loose and on a string, at Citroen's place of business, at a shop on the Rue de la Paix and also at the hotel where she was staying.

After considerable negotiation they were purchased by her for $340,000, delivery to be made to her at Newport, R. I. Mrs. Leeds having turned over to Citroen a necklace, valued at $52,000 or $54,000, in part payment, was permitted to take the pearls into her possession and she wore them on several occasions in Paris. About a week after the payment of the duty of 10 per centum the collector, on instructions from the Secretary of the Treasury, demanded an additional duty of 50 per centum, amounting to $110,335. The appellant went to Washington, protested against this additional exaction and finally asked that the sum already paid be refunded and he
328 be permitted to take the pearls back to France. The request was denied. The additional duty was paid under protest and the pearls, in the papers as imported, were delivered to Mrs. Leeds.

In this connection we deem it proper to refer to a ruling of the Treasury Department which was in force in June, 1906, and which it is fair to assume actuated the appellant in importing and selling the pearls in question. In January, 1905, the board, upon facts almost identical with those at bar, decided in the Rushmore case that 85 pearls "carefully selected, matched, and assorted, and, in fact, are said to have been strung and required only to be restrung in order to form a necklace" were dutiable at 10 per centum ad valorem under paragraph 436. No appeal was taken from this decision, which went into effect February 21, 1905. The Treasury Department sent copies of the decision to officers of the customs for their information and guidance. The interpretation thus placed upon the law by officers of the Government and under which they acted for over fifteen months is entitled to consideration. They had evidently determined that the vexed questions arising under the ambiguous language of the pearl paragraphs should be settled and that this could be accomplished and a fair and reasonable rule established by acquiescence in the Rushmore decision.

In the case at bar the board after full hearing, during which they listened to the testimony of a large number of expert witnesses, decided in favor of the importer and sustained the protest. They found the following facts:

First. That a sufficient number of pearls, even of large size, required to form a necklace, matched as to size and comparative color, but not otherwise, can be assembled within a short time at a price based upon the cost of each separate pearl.

Second. Such a collection would usually be sold at a less price than the aggregate amount if each pearl were sold separately.

Third. The pearls in question belong to such a collection, not being matched as to color and luster with such care as would enhance their value as a collection.

329 Fourth. Loose pearls bear no marks by means of which it can be determined whether they have been strung or set as jewelry, and it is not unusual for the owner of a necklace to remove a pearl and replace it for one more desirable, the discarded pearl taking its place in trade as an unstrung pearl.

Fifth. Over 75 per cent of all large pearls are drilled by the pearl fishers.

The board reached the conclusion that the pearls in question having been imported loose in separate papers were presumptively dutiable as pearls in their natural state by similitude at 10 per centum ad valorem. After the decision of the board Mrs. Leeds was examined in the Circuit Court and testified regarding the pearls that during the negotiations in Paris "they were brought (to the hotel) both on the string and off the string; it was strung up at odd times, then it was taken apart and other pearls were put in and others taken out; so it was strung several times. * * * I wore it—I don't know any particular occasion. I wore it a great deal."

The Circuit Court reversed the board and affirmed the collector on the authority of Tiffany v. U. S. (112 Fed., 672), and Neresheimer v. U. S. (136 Fed., 86), holding that the pearls could not be classified even by similitude as "pearls in their natural state."

The confusion which has arisen regarding the paragraphs in question is, in our judgment, attributable, first, to the change made by Congress from the plain language of previous acts by the insertion of the words "in their natural state" in paragraph 436. These words had no commercial significance at the date of the act of 1897, and the efforts of executive and judicial officers to ascertain their meaning have thus far been unsuccessful. Second, we think the confusion is, in a measure, due to the effort to solve the difficulty by attempting to institute a comparison between the imported articles and combinations not named in the tariff law, depending not upon an examination of the articles themselves, but often upon extrinsic evidence obtained long afterwards. A comparison which can not be uni-
330 form, which imposes 10 per cent upon one aggregation of pearls and 60 per cent upon a similar aggregation, the rate depending upon the ability to obtain evidence of prior use in foreign countries; a comparison which does not admit of a fixed, definite rule, which encourages partiality, promotes injustice, and has broken down in practical application. This is illustrated by the fact that in the cases which have come to the attention of the court the most marked contrariety of opinion has developed as to whether the respective collection was matched for a necklace and whether a larger price could be obtained for the pearls singly or in combination. Were the question presented here for the first time we should be inclined to hold that the pearls in question are excluded by the express language of paragraph 434. It was not seriously disputed at the argument that a pearl which had been "set," but which was removed from its setting and imported in that condition alone could not be classified under that paragraph. It would seem that a similar rule should apply to pearls which have been "strung," but are "not strung" when they reach this country. The law could be as easily evaded in the one case as in the other. If Congress has seen fit to draw the line between pearls which are set and strung and those

which are unset and unstrung, the responsibility rests with the lawmakers and not with the courts.

Moreover, the difficulty is not remedied by the Government's contention. We are unable to perceive the justice or consistency of levying 60 per cent upon one collection of pearls and 10 per cent on another similar collection, the marked discrimination against the first collection being based upon the proof that they are suitable for a necklace and have had a string passed through them.

The value of the pearls, no matter how produced, must be stated in the invoice, and when duty is paid on this value at 10 per centum it would seem to answer the requirements of the law.

We should also incline to the opinion, were the question an open one, that drilled pearls are not excluded from paragraph 436. The words "not strung or set" clearly indicate that "pearls in their natural state" may be strung and set, and it is obvious that no pearl can be strung unless it has a hole through it. The words last quoted were, apparently, unnecessary, but we think it is not difficult, in the light of previous legislation, to decipher the general purpose
331 of Congress. It would appear that the intent was to provide for all pearls in the two paragraphs; 434 covering pearls which had become jewelry by being set or strung in pins, rings, necklaces, etc., and 436 covering all other pearls. The words "natural state" may have been intended to distinguish the pearls from those in the quasi artificial state to which they had been translated by becoming jewels or parts thereof. Unquestionably there are difficulties attending such a construction, but we think them less formidable than those at present existing. With the law so construed there would be a logical, reasonable, and workable system.

We feel constrained, however, to follow the former decisions of this court in the Tiffany and Neresheimer cases, but we see no reason to disturb the conclusions of the board upon the facts. As before stated, they heard all the important witnesses except Mr. Bagg and Mrs. Leeds. We do not consider the testimony of the latter of sufficient importance to justify us in departing from the rule that the finding of the board upon the facts will not be set aside unless against the weight of evidence. It happened that Mrs. Leeds wanted the pearls as a necklace, or as part of a necklace, and naturally she wore them tentatively in Paris.

Another purchaser might have wanted the pearls for a very different purpose and would probably have assembled them, or parts of them, in the proposed environment. The fact remains that the pearls arrived here unstrung and presumably too few in number for a necklace, for Mrs. Leeds on receiving them added six pearls to the collection to make the necklace long enough, and had them placed on a silk cord with a suitable clasp. Then, and not till then, was the necklace complete.

The decision of the Circuit Court is reversed and that of the Board of General Appraisers is affirmed.

332 At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court rooms in the post-office building in the city of New York on the 22nd day of January, one thousand nine hundred and nine.

Present: Hon. Alfred C. Coxe, Hon. Henry G. Ward, Hon. Walter C. Noyes, circuit judges.

BERNARD CITROEN, APPELLANT,
vs.
UNITED STATES, APPELLEE. } 4974.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said Circuit Court be, and it hereby is, reversed, and that of the Board of General Appraisers affirmed.

It is further ordered that a mandate issue to the said Circuit Court in accordance with this decree.

H. G. W.
W. C. N.

333 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. Bernard Citroen vs. U. S. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 22, 1909. William Parkin, clerk.

334 UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 333, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Bernard Citroen against United States, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 7th day of April in the year of our Lord one thousand nine hundred and nine, and of the Independence of the said United States the one hundred and thirty-third.

[SEAL.] WM. PARKIN, *Clerk.*

335 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States Circuit Court of Appeals for the Second Circuit, greeting:

Being informed that there is now pending before you a suit in which Bernard Citroen is appellant and the United States is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and
336 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 23d day of April, in the year of our Lord one thousand nine hundred nine.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

337 (Indorsed:) File No. 21592. Supreme Court of the United States. No. 796, October term, 1908. The United States vs. Bernard Citroen. Writ of certiorari. United States Circuit Court of Appeals, Second Circuit. Filed May 4, 1909. William Parkin, clerk.

338 In the Supreme Court of the United States. October term, 1908.

THE UNITED STATES, PETITIONER,
vs.
BERNARD CITROEN. } No. 796.

Stipulation as to return.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record therein now on file in the office of the clerk shall be taken as the return of the clerk of the Circuit Court of Appeals for the Second Circuit to the writ of certiorari issued herein.

LLOYD W. BOWERS,
Solicitor General.
W. WICKHAM SMITH,
Counsel for Respondent.

April 24, 1909.

(Endorsed:) U. S. vs. Citroen. Stipulation. United States Circuit Court of Appeals, Second Circuit. Filed May 4, 1909. William Parkin, clerk.

339 *To the honorable the Supreme Court of the United States:*

The record and all proceedings whereof mention is within made, having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as a return to the writ of certiorari issued herein.

Dated, New York, May 5, 1909.

WM. PARKIN,
Clerk of the United States Court of Appeals
for the Second Circuit.

340 (Indorsed:) United States Circuit Court of Appeals, Second Circuit. Bernard Citroen v. United States. Return to certiorari. Supreme Court U. S. Office of the clerk. Received May 8, 1909.

341 (Indorsement on cover:) File No., 21592. Supreme Court U. S. October term, 1910. Term No. 189. The United States, petitioner, vs. Bernard Citroen. Writ of certiorari and return. Filed May 8th, 1909.

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United States Supreme Court.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA,
Petitioner,

AGAINST

BERNARD CITROEN,
Respondent.

No.

MOTION TO ADVANCE.

And now at this October term, 1908, comes Bernard Citroen, the respondent above named, by W. Wickham Smith and John K. Maxwell, his attorneys, and moves that the cause above entitled be advanced for hearing at the October term, 1909, at such date as may be convenient for the Court.

The cause involves the dutiable classification under the Tariff Act of 1897 of a collection of thirty-seven pearls imported by the respondent and entered at the Port of New York in April, 1906. These pearls were returned by the appraiser as "pearls in their natural state," dutiable at 10 per centum *ad valorem* (Par. 436, Tariff Act of 1897). The Collector, however, acting under specific orders of the Secretary of the Treasury, classified the pearls as "pearls set or strung," dutiable at 60 per centum *ad valorem* (Par. 434, Tariff Act of 1897).

The Board of General Appraisers sustained the protest of the importer. The United States Circuit Court for the Southern District of New York reversed their action and sustained the action of the Collector. The Circuit Court of Appeals for the Second Circuit reversed the decision of the Circuit Court and affirmed the decision of the Board of General Appraisers. Their decision was made on the twelfth day of January, 1909. On the nineteenth day of April, 1909, this Court issued a writ of certiorari to review said decision.

REASONS FOR THE MOTION:

The additional duty of 50 per centum of the foreign value of the pearls called for by the Collector's decision was paid on the sixth day of April, 1907, and amounted to $110,335.00. There is no provision of law under which the respondent can recover from the Government any interest on this amount if it should be finally decided that it had no right to exact it. Computing the interest at the rate of 4 per centum (which is certainly a conservative estimate of what the use of their money is worth to business men) that interest amounts today to $9,153.23; on the 15th of October next it will amount to $9,966.42; on the 15th of January next it will amount to $12,249.01. There is every reason for believing that if this cause is not advanced it will not be reached in regular order until after October, 1910. The interest at 4 per centum from April 6, 1907, to October 15, 1910, would be $15,555.71.

In other words, if this cause should not be advanced, the interest which amounts (at 4 per centum) to over $10. a day, would amount, before the case can be argued and decided, to over $15,000., no part of which can be recovered by the importer.

who has now the decision of the Circuit Court of Appeals that it was unlawfully exacted.

It is hoped that these equitable considerations will commend themselves to the Court and lead it to grant the motion to advance.

We are authorized to state that the Solicitor-General concurs in this motion.

Dated, New York, May 4, 1909.

W. WICKHAM SMITH,
JOHN K. MAXWELL,
Attorneys for Respondent.

W. WICKHAM SMITH,
Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES, PETITIONER,
v.
BERNARD CITROEN.
No. ——.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF THEREON.

The Solicitor-General, on behalf of the petitioner, respectfully prays for a writ of certiorari to review a decree of the United States Circuit Court of Appeals for the Second Circuit, wherein it was adjudged that certain pearls worn and purchased abroad as a necklace, and imported and redelivered to the purchaser in this country as the identical pearls so worn and purchased, are dutiable at 10 per cent ad valorem under paragraph 436 and section 7 of the tariff act of July 24, 1897, as similar to pearls in their natural state, not strung or set, and are not dutiable at 60 per cent ad valorem, under paragraph 434, as jewelry, or parts thereof, finished or unfinished, or pearls set or strung, nor under section 7 as similar thereto.

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BRIEF IN SUPPORT OF THE PETITION.

STATEMENT.

The controversy arises out of the importation of 37 pearls and involves $110,355.

Those portions of the tariff act which are here material read as follows:

> PAR. 434. Articles commonly known as jewelry, and parts thereof, finished or unfinished, not specially provided for in this Act, including precious stones set, pearls set or strung, and cameos in frames, sixty per centum ad valorem.
>
> PAR. 436. Pearls in their natural state, not strung or set, ten per centum ad valorem.
>
> SEC. 7. That each and every imported article, not enumerated in this Act, which is similar, either in material, quality, texture, or the use to which it may be applied to any article enumerated in this Act as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; and if any nonenumerated article equally resembles two or more enumerated articles on which different rates of duty are chargeable, there shall be levied on such nonenumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest rate of duty; and on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component

material thereof of chief value; and the words "component material of chief value," wherever used in this Act, shall be held to mean that component material which shall exceed in value any other single component material of the article; and the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article. If two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates.

The Government insists that the pearls should be assessed at 60 per cent ad valorem under paragraph 434, or under section 7, as most resembling one of the articles specified in paragraph 434 in the particulars mentioned in said section, while the importer insists that they should be assessed at 10 per cent ad valorem under paragraph 436 and section 7 as most resembling "pearls in their natural state, not strung or set."

The appraiser returned them as "drilled pearls—10 per cent," but the collector classified them by by similitude as pearls, set or strung, or jewelry dutiable at 60 per cent ad valorem (R. 8), and against this classification the importer protested.

The evidence before the Board of General Appraisers is in substance as follows:

The pearls were collected and assembled for a syndicate of four persons (R., 33). They were drilled, polished, well graduated in size, and fairly well

matched in color and quality for large pearls (R., 21–24, 89–92, 116, 117, 126, 127, 130, 135, 170, 212, 253, 258). They were displayed as a collection for a necklace, were put in the hands of several dealers to sell, in accordance with the custom of the trade, and, after negotiations with various persons, were sold to Mr. William B. Leeds (R., 22, 24, 35, 38, 61, 69, 114, 129, 138, 190, 192).

Bernard Citroen imported them packed by sizes, unstrung, in five pearl papers, in a small box, the usual method of transportation (R., 21, 43, 81, 82). The several packages were separately valued in the invoice (R., 165).

The total invoice value is 1,143,366 francs, or $220,000 (R., 9). Citroen made the entry and paid the duties on that value and delivered the pearls to Mr. Leeds at Newport (R., 22, 72, 165).

The majority of the Board of General Appraisers sustained the protest on the ground that while the evidence showed that for several years these pearls were offered for sale collectively, and were even strung on silk cords, yet they were not so strung as jewelry but in order to show their desirability as a collection suitable for a necklace. (R., 270, 275.) One general appraiser dissented from this view, and was of the opinion that they were dutiable at 60 per cent ad valorem. (R., 277–281.)

An appeal was prosecuted to the Circuit Court, and there, by order of the court, the following additional testimony was taken on behalf of the Government.

It was proved by Milton P. Bagg, a dealer in jewelry, that about four years previous thereto he was shown these pearls by Hugo Citroen at his place of business in Paris "graduated, being shown in a necklace form;" that it was the most important collection he then saw on exhibition for sale; that no dealer has more than one such collection in ten years; *that the pearls were shown to him as a necklace, and were in the usual condition in which pearls are usually exhibited as a necklace;* that some time after this Bernard Citroen, brother of Hugo Citroen, brought to New York an imitation necklace, being an imitation of these pearls, with which he was trying to sell them, and that it was represented as a "historic" necklace and was well known as a necklace (R. 291, 295, 296, 297, 299, 300, 302).

Mrs. Leeds, the present owner, testified that she was in Paris in the spring of 1906; that she went to the place of business of Hugo Citroen, and was there shown a collection of 37 pearls; that they were then loose, but she afterwards saw them at Cartier's arranged on a string in the form of a necklace, with clasps so that the ends of the string could be fastened together, and she tried them on as a necklace to see how they appeared; that they were sent to her at the hotel a number of times; *that she wore them a great deal as a necklace; that the purchase was made in Paris but they were to be delivered in America, the purchase price being $340,000; that she turned over in Paris in part payment another pearl necklace for which she had paid $52,000 or*

$54,000; and that she saw the pearls no more until they were delivered to her in Newport, when they were represented to be the same necklace that she had worn in Paris (R., 308–314).

The case was tried by Circuit Judge Lacombe, and the board was reversed in a brief opinion in which he said (R. 317):

> This case forcibly indicates the defects of the old practice whereby the proofs were taken in part before the Board of General Appraisers and in part before the court after the board's decision was rendered. The opinion of the two general appraisers who united in reversing the collector—the third general appraiser dissented—indicates that they would probably have decided the other way "had these 37 pearls been assembled into a completed necklace abroad and worn as such." The brief additional testimony introduced in the Circuit Court exclusively establishes that proposition, and upon all the proofs the 37 pearls can not, under the rules laid down by the Court of Appeals in *Tiffany* v. *U. S.* (112 F. R., 672), and *Neresheimer* v. *U. S.* (136 F. R., 86), be classified, even by similitude, as "pearls in their natural state."

On appeal to the Circuit Court of Appeals, the judgment of the Circuit Court was reversed and the classification and rate fixed by the Board of General Appraisers were affirmed.

Petitioner prays for a writ of certiorari in order that the judgment entered by said Circuit Court of Appeals

may be reviewed by this court, and in support thereof assigns the following grounds:

I. The Circuit Court of Appeals improperly applied the rule of conclusiveness of findings of fact by the board.

II. The decision of the Circuit Court of Appeals conflicts with prior pearl cases.

III. An important principle of classification of general application is involved and was erroneously decided by the Circuit Court of Appeals.

IV. The Circuit Court of Appeals ignored a plain provision of the tariff law.

V. The Circuit Court of Appeals misapplied the similitude clause of the tariff act.

I.

The Circuit Court of Appeals improperly applied the rule of conclusiveness of findings of fact by the board.

New evidence introduced in the Circuit Court made the board's findings of fact inconclusive. The rule, as declared by the courts, is that a finding of fact by the board will not be reviewed unless it is either entirely unsupported by the evidence, or clearly against the weight of the evidence, *or unless new evidence was introduced in the Circuit Court which was not considered by the board.* (*Apgar* v. *United States*, 78 Fed., 332, 334; C. C. A.)

The new evidence is that the pearls were assembled into a complete necklace, and were a necklace and were worn abroad many times as such by Mrs. Leeds, the purchaser, before importation, and were brought

to this country and redelivered to her as a necklace, at Newport, in performance of the contract of sale made in Paris. This is the turning point in the controversy, and this new evidence was the most vital of all that was offered on behalf of the Government.

Had this evidence been before the board, the board would, according to its own declaration, have overruled the protest and affirmed the collector's classification. The majority of the board said (R., 275):

> Turning from the proper classification for duty of drilled pearls as an academic question, we hold that, had these 37 pearls been assembled into a completed necklace abroad, and worn as such, they would, on the authority of *Tiffany* v. *United States* (*supra*), be dutiable as jewelry by similitude.

II.

The decision of the Circuit Court of Appeals conflicts with prior pearl cases.

The decision of the Circuit Court of Appeals conflicts with *Tiffany* v. *United States* (103 Fed., 619 (C. C.); 105 Fed., 766 (C. C.); 112 Fed., 672 (C. C. A.); and *Neresheimer* v. *United States* (131 Fed., 977 (C. C.); 136 Fed., 86 (C. C. A.)). Had the facts in those cases been the same as in the case at bar, the Circuit Court of Appeals would have affirmed the judgments below in favor of the Government, according to the rule declared by them in the *Tiffany* and *Neresheimer cases* that the assortment and selection must be such as to produce a collocation of pearls similar to the collocation found in the articles of

jewelry known as necklaces or strung pearls, where time and skilled labor have been applied to produce not merely a collection, but an aggregation such that the string of pearls thus produced is worth more than the aggregate values of the individual pearls composing it. (112 Fed., 674; 136 Fed., 89.)

In the first *Tiffany case* (103 Fed., 619), pearls drilled and unstrung were held by the Circuit Court not to be "pearls in their natural state."

In the other *Tiffany case* (105 Fed., 766; 112 Fed., 672), the pearls were of various sizes, qualities, colors, and shapes, not set or strung, and not adapted for such purpose in their then condition, but to be put into the stock of the importer for such use as the demands of the importers' trade should thereafter require. The Circuit Court decided that such pearls bore a closer resemblance to strung pearls than to pearls in their natural state. The Circuit Court of Appeals reversed the Circuit Court, because the latter erred in taking as the standard of comparison "aggregations of individual pearls which have been strung into an article of jewelry," which the pearls then in issue were not, *but which those now in issue were.*

In the *Neresheimer case* the pearls had to be rebored, and some at least, repolished. They were imported merely as series of pearls, not selected for a special piece of jewelry, but offered for sale and sold on their individual merits. After being rebored and repolished, they went into the general stock of pearls for making up different articles of jewelry. The

Circuit Court affirmed the board's decision, which sustained the collector's classification, but was reversed by the Circuit Court of Appeals, because the pearls did not come within the foregoing rule declared in the Tiffany case.

Tested by that rule, 60 per cent is the proper rate of duty, as assessed, on the pearls now in issue. Years were spent in their collection. They were assorted and selected as to size, quality, etc., and kept intact for years, and became well known in the trade as a collection for a valuable necklace. They were strung and worn abroad and purchased as a necklace at a great price, including duties, under an executory contract requiring redelivery to the purchaser in this country on payment of the balance due. *They were not, and under the contract, could not be, imported for the general stock of pearls of a jeweler, to be made up into different articles of jewelry.* They were carefully packed in five pearl papers, by sizes, the largest in one paper, the six next in size in another paper, and eight, ten, and twelve in the other papers, respectively, in the order of graduation. *The status of these pearls is the same as if they had been imported by Mrs. Leeds herself, after having been purchased and used as a necklace, instead of by Citroen for redelivery to her.*

The importer undertook to establish that pearls in the form of a necklace are less valuable than the aggregate values of the individual pearls. The burden of proof was on him. The testimony is contradictory.

Some witnesses said the pearls were worth less or were doubtful (R., 105, 109, 132, 133, 151, 159, 160, 161); and others said they were worth more as a necklace (R., 234, 235, 241, 242, 243, 261). The importer and another witness said the value was the same. (R., 178, 179, 197.) The pearls as a necklace were sold for $120,000 (only $22,000 of which represented duties at 10 per cent) more than the wholesale value of the individual pearls as invoiced and entered. Judge Lacombe said (R., 318):

> Reference is made to testimony to the effect that a collection of pearls will often be sold to one purchaser at a less price than aggregate would amount to were each pearl sold separately. There is nothing surprising in the circumstance that a dealer will be content with a smaller percentage of profit if he can sell thirty-seven exceptionally large and expensive pearls in a single transaction than he would expect if he had to dispose of them individually, possibly having to wait many months before all were sold. It is a mere "wholesome discount," and does not indicate that the intrinsic value of the collection is reduced by sorting, selecting, and arranging. If it were, we may be very sure that the dealers would not thus waste their time and skill and the interest on their money.

Judge Lacombe, who wrote the opinions of the Circuit Court of Appeals in the Tiffany and Neresheimer cases, supra, reversed the board and sustained the collector's classification in the case at bar, because the

evidence introduced in the Circuit Court brought the pearls within the rule declared in said cases.

The Circuit Court of Appeals cited *In re Rushmore* (T. D., 25986) against the Government. That decision of the board could not, in view of the foregoing cases and of the law, properly be made decisive of the case at bar, even if it were directly in point, which it is not. The pearls were said to have been carefully selected, matched, and assorted, and to be in a condition to be restrung in order to form a necklace, but there was no evidence, as in the case at bar, that they were worn as a necklace before importation and were imported expressly for and as such necklace to be redelivered to the purchaser in accordance with a contract previously made abroad.

III.

A principle of classification of general application is involved, and was erroneously decided by the Circuit Court of Appeals.

The principle involved is that articles imported packed in separate parts or in a "knocked-down" condition are dutiable as entireties. This principle has been applied in numerous cases. Its scope is indicated in *United States* v. *Schoverling* (146 U. S., 76), *Isaacs* v. *Jonas* (148 U. S., 648), and *United States* v. *Irwin* (78 Fed., 799). In the *Schoverling* case the barrels, a very substantial part of guns, were not imported with the stocks, and it was held that the latter were not dutiable as guns. Had the barrels

and stocks been imported at the same time, although separately packed, classification as a whole would have been sustained by this court, as indicated by the opinion in that case and in *Isaacs* v. *Jonas*, and as was later done by the Circuit Court of Appeals for the Second Circuit in *United States* v. *Irwin*, in which the Schoverling case was distinguished.

In *United States* v. *Schoverling* it was said (at pp. 81, 82):

> It nowhere appears that these gunstocks had formed part of completed guns in Europe, nor was the question of the importation of the barrels for the guns involved.

In *Isaacs* v. *Jonas* this court held that cigarette paper of suitable size and quality tc be used in making cigarettes, and pasteboard covers therefor of corresponding size, imported separately and entered together with the intention to combine them with paste into cigarette books, were dutiable as smokers' articles. It was said (at p. 654):

> In *United States* v. *Schoverling* the point decided was that gunstocks, although intended to be put with barrels to form complete guns, yet no question of the importation of gun barrels being involved, were not guns; and there was no intimation that if the stocks and barrels had both been imported by the same person and entered at the same time, with the intention of himself putting them together as guns, they would not have been dutiable as such.

In the Irwin case it was said (at p. 802):

> * * * The Schoverling case does not decide that when the stocks and corresponding barrels are imported together, shipped by the same vessel for the same importer and entered at the custom-house at the same time, duty is to be assessed upon the fragmentary parts. Under such circumstances we think the parts are dutiable as a whole.

Had a string and clasp been imported with the pearls there could be no doubt of the correctness of the collector's classification under the foregoing decisions. The question is whether their absence makes the principle inapplicable. The evidence establishes that the object of the selection and graduation was to make a necklace, and that such pearls are regarded in the trade and sold as a necklace, irrespective of the string. (R., 130, 133–139, 141, 142, 148, 162, 171–176, 178, 197, 227, 228–236, 244, 253–255, 263, 266, 300, 302, 304.)

The decisions, moreover, show that some minor part of an article may be lacking or something remain to be done after importation to complete an article and yet it be classified as an entirety; as an illustration, cigarette papers and pasteboard covers requiring pasting together to make them cigarette books were held in *Isaacs* v. *Jonas, supra*, dutiable as smokers' articles; and printed sheets, in one case some pages missing, imported loose to be stitched together and bound, were held free as "books" in *Read*

v. *Merchandise* (103 Fed., 197) and in *MacMillan* v. *United States* (116 Fed., 1018).

If the absence of a string and clasp worth a few dollars precludes classification as jewelry of a necklace costing $340,000, it will only be necessary to withhold some insignificant part of any article to take it out of the operation of the entirety principle. On the removal of buttons clothing would cease to be wearing apparel, and valuable machinery with rivets or bolts, necessary to put the parts together, missing, would be dutiable according to the several constituents and not as machinery.

The collector's classification is entirely consistent with the right of an importer to so manufacture his goods as to reduce the rate of duty, and with the requirement that duties shall be assessed on merchandise in the condition in which it is imported, declared by this court in several cases. The pearls were selected and assembled for a necklace, and were imported for redelivery to the purchaser as the identical pearls worn abroad as a necklace by her. Their being packed by sizes as taken off the string instead of being indiscriminately mixed indicates that in the condition in which they were imported they were a necklace and not loose pearls intended for the stock of a jeweler; but this fact is conclusively shown by the testimony of Mrs. Leeds that she bought them for a necklace and that they were delivered to her as such.

IV.

The Circuit Court of Appeals ignored a plain provision of the Tariff Law.

The court below ignored the specific provision in paragraph 434 for parts of jewelry, finished or unfinished, which clearly embraces these pearls.

As imported, they were unquestionably part of a particular necklace and were imported for redelivery to Mrs. Leeds as the pearls constituting the necklace worn abroad by her and purchased under an executory contract. No matter whether or not suitable for the purpose, they could not be diverted by the importer to any other use nor to anybody else than the purchaser without breach of contract. The intention is plainly shown by the facts and is made material by the decision of this court in *Isaacs* v. *Jonas*, *supra*, wherein, referring to the cigarette papers and covers, it was said (p. 653):

> * * * and his intention at the time of importing them, as well as his motive in importing them in the form that he did, was to combine them into cigarette books for the use of smokers.

V.

The Circuit Court misapplied the similitude clause of the Tariff Act.

The similitude clause of the tariff (sec. 7) should not have been resorted to, because the merchandise is specifically provided for in paragraph 434.

The pearls bear a closer similitude to "jewelry, or parts thereof, finished or unfinished," or to "pearls set or strung," than to "pearls in their natural state, not strung or set."

Counsel for the importer concedes that the pearls were similar in material, quality, and texture to pearls that would be used for a necklace. (R., 176.) These are three of the four characteristics named in the similitude clause.

To hold that pearls merely drilled in their crude state, without any polishing or assortment, or selection as to size, color, etc., are dutiable, when strung, at 60 per cent, but that pearls which have passed from that condition and been made into a valuable article of jewelry, and worn as such, are dutiable, when unstrung, at 10 per cent, the same as pearls in their natural state, would be an unreasonable and absurd construction of the law, and would deprive the Government of more than $100,000 in revenue to which it is entitled in this case alone.

In view of the importance of these issues and the conflict of this decision with the rule declared in the Tiffany and Neresheimer cases, and of apparent error of the court below, I respectfully ask that the writ of certiorari be granted.

LLOYD W. BOWERS,
Solicitor-General.

APRIL, 1909.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES, PETITIONER,

v

BERNARD CITROEN.

Brief in opposition to petition for writ of Certiorari.

STATEMENT.

I.

Failure of Petitioner to show any grounds for the application:

The statutes make the Circuit Court of Appeals a final tribunal in revenue cases, with the reserved right to this Court to issue writs of certiorari to bring any cases in which the decision of the Court of Appeals is made final, to this Court for review. In making such applications for the exercise of this power, it is usual for Petitioners to set forth strong and cogent reasons why the power should be exercised. Such reasons are (among others) where vast public interests are involved, or great and important questions require determination by this Court; where Courts in different jurisdictions

have given different interpretations to statutes; where there is some conflict of authorities and large amounts of money are involved, etc.

In this case, no one of these reasons is assigned. Indeed, no good reason, and scarcely any colorable reason, is suggested why this particular controversy should not be terminated. It is not alleged that there is a single other customs case pending anywhere in which the question decided in this case is involved. The amount involved in this case is correctly stated as One hundred and ten thousand, three hundred and fifty-five ($110,355.00) dollars. This, though a very large amount to the Respondent, is certainly not very large to the Petitioner.

It is not claimed that the provision of law construed in this case requires any interpretation as a guide for the future, nor could it be, for not only is the Tariff Act under which this case arose about to be superseded by a new one, but that new one contains the following provision inserted, as we understand, at the request of the Treasury Department:

> "Collections of pearls, selected, matched or graded, shall be dutiable as jewelry." (So-called Payne bill, Par. 447.)

Having considered reasons not assigned for this petition, let us consider briefly those that are. We find them stated on page 7 of Petitioner's brief as five in number. The first is that the Circuit Court of Appeals improperly applied the rule of conclusiveness of findings of fact by the Board. (Presumably the Board of General Appraisers.) Passing by for the moment the question whether there is any ground for this statement (to which we shall refer herafter), would it constitute any

ground for the issuance of a writ of certiorari? If the Circuit Court of Appeals had done what is alleged, would an alleged error of this particular character, in a case not a class case, call for the issuance of a writ of certiorari by this Court? No authority is cited for the suggestion that it would.

The second ground alleged is that the decision of the Circuit Court of Appeals in this case "conflicts with prior pearl cases." Suppose this were so. An examination of all the so-called prior pearl cases referred to on page 8 of Petitioner's brief shows that they were all decided in the same Circuit, by the same Courts, as the decision in this case, Can the fact that any given Court has modified or reconsidered its position and made a decision inconsistent with its own prior decision, be a ground for asking this Court to issue a writ of certiorari? The proposition is certainly a most remarkable one. When we come to look for a statement of what this principle is, we find it set forth on page 12 of the Petitioner's brief, as follows:

> "The principle involved is that articles imported packed in separate parts, or in a knocked-down condition, are dutiable as entireties."

No such principle is involved in this case and no such facts appear in it as we shall presently show.

The fourth ground assigned is that the Circuit Court of Appeals ignored a plain provision of the Tariff law. By reference to page 16 of Petitioner's brief we find the plain provision said to have been ignored to be a provision in Paragraph 434 for parts of jewelry, finished or unfinished. If the Court ignored this provision, it was because it was so clearly irrelevant that no discussion of it was

necessary. No principle is better settled than that when specific provisions are made in a tariff for any articles they are not intended to be covered by other more general provisions which might otherwise include them. Arthur v. Lahey, 96 U. S. 112. When the law provides for "articles commonly known as jewelry and parts thereof, finished or unfinished, not specially provided for in this Act," and then goes on to separately enumerate "pearls set or strung" and "pearls in their natural state, not strung or set," it is too plain for argument that, pearls being specially provided for, were not intended to be treated as parts of jewelry.

The fifth ground of error assigned is that the Circuit Court misapplied the similitude clause. We are here unable to follow the Solicitor-General's argument, for, in the very next sentence, page 16, he says that the similitude clause should not have been resorted to at all. In the Collector's report of the instructions of the Secretary of the Treasury, under which he acted (Rec. p. 8, Fol. 23), he states that he classified the merchandise by similitude as pearls set or strung, and in the Secretary's letter of instruction (Rec. page 9, Fol. 27), we find the Secretary telling him that,

> "It is the opinion of the Department that the importation in question is dutiable at the rate of 60% ad valorem, under the enumeration for pearls, set or strung, either directly or by similitude."

From the foregoing review it will be seen that the petition for this writ gives none of the reasons which are usually supposed to be given to this Court for an application of this character, and the reasons which it does give are wholly insufficient to invoke the jurisdiction.

II.

The action of the Government in this case is so shockingly unjust and inequitable that no court should sustain it if it can possibly do otherwise.

Prior to 1902 drilled pearls were classified by customs officers as non-enumerated manufactured articles dutiable at 20 per cent. under Section 6 of the Tariff Act. Importers protested and claimed the goods dutiable at 10 per cent. as pearls in their natural state. In Tiffany vs. U. S., 103 Fed. Rep. 619, Judge Lacombe, sitting in the Circuit Court, held that the terms pearls in their natural state could not be considered as an enumeration of drilled pearls. No appeal was taken from this decision. On December 6, 1901, the Court of Appeals for the Second Circuit, in the case of Tiffany vs. United States, 112 Fed. Rep., 672 (Opinion by Lacombe, J.), held that certain drilled pearls imported by Tiffany & Co. were dutiable at 10 per cent. by similitude to pearls in their natural state, under Section 7 of the Tariff Act and paragraph 436. The pearls there in question were a promiscuous lot of unassorted pearls, and therefore the only point in controversy and requiring decision by the Court was, whether such a lot of pearls were dutiable at 20 per cent. under Section 6 as assessed by the Collector, or were dutiable at 10 per cent. as assimilated to pearls in their natural state under paragraph 436 and Section 7, as claimed by the importer, or at 60 per cent. under Section 7 and paragraph 434, as decided by Judge Coxe in the Circuit Court. The Court sustained the protest of the importer as to the pearls then and there in question, but in its decision incorporated a dictum, reading as follows:

> "We think the Court erred in taking as a standard of comparison for these pearls, which are not matched or selected, and are therefore to be considered individually, those aggregations of individual pearls which have been strung into an article of jewelry. The evidence shows that there has to be a careful process of assortment and selection as to size, quality, lustre, shape, etc., which takes time and skilled labor, so that the string of pearls thus produced is worth more than the aggregate values of the individual parts composing it."

Acting in accordance with his construction of this dictum, the Collector of the Port thereupon proceeded, either by liquidation or reliquidation, to assess 60 per cent. duty upon certain collections of pearls which he claimed had been matched and assorted for the purpose of using them for a necklace. One of these importations was that of the firm of Neresheimer & Co., and as to that importation, after it had been returned at 20 per cent. duty, delivered to the importer and sold upon the basis of the duty exacted, the Collector reliquidated the entry and demanded 40 per cent. additional duty, amounting to about $50,000. The correctness of his action was challenged by protest and brought before the Board of Appraisers and the Courts. In the Circuit Court of Appeals the Collector's action was overruled, and the importer's claim that the pearls were dutiable at only 10 per cent. was sustained (Opinion by Lacombe, J.). See Neresheimer vs. United States, 136 Fed. Rep., 86.

While the Neresheimer case was on its way through the courts, the Collector had taken 60 per cent. duty on various importations of pearls. Af-

ter the rendition of the Neresheimer decision, the Board of Appraisers took up several of these protests. On the 21st of January, 1905, they passed upon an importation of pearls by Mr. Charles E. Rushmore, a prominent lawyer of New York City. Their decision sustained the protest of the importer, and said:

> "This protest covers 85 pearls, which the Appraiser in a special report states 'have been carefully selected, matched, and assorted, *and, in fact, are said to have been strung and require only to be restrung in order to form a necklace.* They are in the same condition as those pasesd upon by the Board in G. A. 5146 (T. D. 23, 748).' Based upon this report we hold that said merchandise is dutiable at 10 per cent. ad valorem under paragraph 436, Act of July 24, 1897."

The decision is given in full in the appendix.

This decision was printed in the Synopsis of Treasury Decisions, promulgated in Volume 9, No. 4, of Treasury Decisions, preceded by a circular which said that it was *"published for the information and guidance of officers of the customs, internal revenue, and others concerned."*

The circular appears in full in the appendix.

No appeal was ever taken from the decision of the Board. Whether or not the Board was more liberal than it should have been in construing the Court of Appeals decision in the Neresheimer case, it is unnecessary here to consider. Suffice it to say that their construction of that decision was adopted by the Treasury Department and promulgated, as it is by the circular in question, for the information and guidance of all parties concerned.

The importation of the pearls in this case was

made on the 11th of June, 1906, more than one year and four months after the promulgation of the decision in Rushmore's case, which, by the terms of the circular quoted, was "*to take effect at the expiration of thirty days from the Board's decision*," of January 21st, 1905, unless an appeal was taken, which was not done. It was therefore the rule for everybody, Collectors, appraising officers, and importers, that collections of pearls, even if they had been "carefully selected, matched and assorted and even strung and required only to be restrung in order to form a necklace," were dutiable at 10 per cent. as "pearls in their natural state." That such was recognized as the law by the Treasury Department was proven by the act of the officials at the Appraiser's office in this case by returning the pearls at 10 per cent., although one of the examiners testified that there was no question in his mind that they were fit for, and intended for a necklace. (Fol. 789.) It is impossible to conceive of a grosser act of harsh injustice than for the Treasury Department to proclaim to the world that pearls matched, assorted and even strung before importation may be imported at a duty of 10 per cent., and then arbitrarily to demand of the importer who has acted upon the faith of their proclamation, the payment of over $110,000 additional duty on a single importation of pearls. Whatever may be the law in this case, no one can say a word in defense of the departmental action as a matter of equity, justice, and fair dealing, and while the plain language of any law may not be disregarded by courts on consideration of equity, it must certainly be that in doubtful cases no court, if it can see its way to do otherwise, will sustain the legality of such an outrageous proceeding.

CORRECTED STATEMENT OF FACTS.

The petition filed by the Solicitor General does not quite correctly state the facts as established by the Record. Following are some of the inaccuracies:

In the opening paragraph the pearls are referred to as having been purchased abroad as a necklace and imported and re-delivered to the purchaser in this country as the identical pearls so worn and purchased.

Mrs. Leeds, who now has the pearls, testified as follows:

> "Q. How were they arranged; the pearls?
>
> A. I have seen them loose, and I have seen them on a string, both ways; that day at Citroen's they were loose." (Fol. 923.)
>
> "Q. In what condition was it when it was brought to the hotel?
>
> A. They were brought both on the string and off the string; it was strung up at odd times, then it was taken apart and other pearls were put in and others taken out; so it was strung several times." (Fol. 925.)
>
> "A. There were thirty-seven that I had abroad and thirty-seven were delivered to me in Newport; and I have six more now on the string. Six that I added since, so at present there are forty-three on the string." (Fol. 929.)
>
> "Q. And the purchase was made there, wasn't it?
>
> A. I said that I would take the pearls in America; the purchase was not made there." (Fol. 937.)

APPENDIX.

(T. D. 25, 986-G. A. 5899.)

PIERCED PEARLS.

Pearls pierced but not strung or set are dutiable at the rate of 10 per cent. ad valorem, under paragraph 436, tariff act of 1897, by similitude to the "pearls in their natural state not strung or set" enumerated in that paragraph.—Neresheimer v. United States (T. D. 25, 876) followed; G. A. 5146 (T. D. 23, 748).

UNITED STATES GENERAL APPRAISERS,

New York, January 21, 1905.

In the matter of protest 4040 h. of Charles E. Rushmore against the assessment of duty by the Collector of Customs at the Port of New York.

Before Board 1 (Lunt, Sharretts and McClelland, General Appraisers; McClelland, G. A., absent).

SHARRETTS, General Appraiser: This protest covers 85 pearls, which the Appraiser in a special report states "have been carefully selected, matched and assorted *and, in fact are said to have been strung and require only to be restrung in order to form a necklace.* They are in the same condition as those passed upon by the Board in G. A. 5146 (T. D. 23, 748)." Based upon this report, we hold that said merchandise is dutiable at 10 per cent. ad valorem under paragraph 436, Act of July 24, 1897. In G. A. 5146 (T. D. 23,748) the Board reached a different conclusion, and was affirmed by

the Circuit Court for the Southern District of New York, in suit 3328. Upon review by the Circuit Court of Appeals, however, the lower court was reversed, and the pearls were held to be dutiable by similitude at 10 per cent. ad valorem under paragraph 436. See T. D. 25,876.

On the authority of this decision, we sustain the claim in the protest that said merchandise is dutiable at 10 per cent. ad valorem under paragraph 436.

The Collector's decision is reversed.

APPENDIX (2).

Treasury Department,
Office of the Secretary,
Washington, D. C.,
January 25, 1905.

To Officers of the Customs, Internal Revenue and Others:

The following decisions of the Department (including those under Sections 13 and 14, Act of June 10, 1890, made by the Board of United States General Appraisers at the Port of New York) rendered to date, upon the construction to be given to the various Acts of Congress relating to the tariff, administration of the customs, internal revenue, etc., *are published for the information and guidance of officers of the customs, internal revenue, and others concerned.*

The decisions of the Board of General Appraisers sustaining protests will take effect at the expiration of thirty days from the date thereof, unless in the meantime appeal has been taken under the provisions of Section 15 of the Act of June 10, 1890, on behalf of the United States, in which case the proper officers will be duly advised. Action under the decisions from which appeals have been so taken will be suspended until the questions involved therein shall have been judicially determined (see Circular of November 15, 1890, T. D. 10, 369).

Decisions for publication rendered by the Department and the Board of General Appraisers are issued each Thursday.

Leslie M. Shaw,
Secretary of the Treasury.

III.

One of the cardinal rules of the construction to Tariff Statutes laid down by this Court is that merchandise is dutiable in the condition in which it is imported and found by the Collector and not, unless the Statute itself establishes such a criterion, according to its previous history or subsequent use or intended use. (See Worthington v. Robbins, 139 U. S. 337, Dwight v. Merritt, 140 U. S. 213, U. S. v. Schoverling, 146 U. S. 76.)

This importation consisted of thirty-seven pearls in five papers (see testimony of examiner, Rec. p. 260, fol. 779-780). Neither the previous history of these pearls nor their intended subsequent use could have been known to the examiner at the time he saw them.

The Government's position in this case subtantially is that this collection of pearls, by reason of the fact that they had been temporarily strung and worn abroad, should have been held dutiable at 60 per cent., whereas a precisely similar collection of pearls of the same character and value which had not been worn abroad would be dutiable at 10 per cent. In other words, that merchandise should be held dutiable not according to its condition at the time of importation but to facts subsequently developed as to the previous history of the merchandise. Any such construction of the law would throw the whole machinery of collecting duties into uncertainty and chaos.

The pearls in question were in fact, pearls in their natural state notwithstanding the fact that a hole had been pierced in them and there was no occasion for resort to the similitude clause. (Sonn v. Magone, 159 U. S. 412, Robertson v. Saloman, 130 U. S. 412, Zanmati vs. U. S. 153, F. R. 880, Hartranft v. Wiegmann, 121 U. S. 609.) See also the decision of the Court of Appeals in the present case where this contention is substantially held to be correct.

The Board of Appraisers find that:

> "The record in this case is voluminuous but a careful analysis of the testimony leads us to the following conclusions, viz.:
>
> Pearls of greater dimensions than the average are comparatively rare; hence it frequently requires several years' search in order to secure a sufficient number to form a necklace all accurately matched in the essential features of size, color, and luster. Such a collection thus assembled would no doubt command a higher price than the aggregate value of the separate pearls. On the other hand, a sufficient number of pearls, although of large size, required to form a necklace, matched as to size, but not otherwise, except a mere regard for comparative color, could be assembled within a short time and at a price based upon the cost of each separate pearl. In order to dispose of thirty or more pearls to one purchaser, such a collection would usually be sold at a less price than the aggregate would amount to were each pearl sold separately. *The evidence shows, and we find that the pearls in question belong to the latter and not to the first class.*"

No evidence was taken in this case subsequent to the record referred to which in any way overcame the effect of this finding. The Board of Appraisers were performing the functions of a jury in passing upon questions of fact, and this Court will not review them.

This case, as before intimated, is not a class case. It is a case turning on its own peculiar facts. These have been thoroughly investigated and passed upon by the Board of General Appraisers, a tribunal created especially for that purpose. They took the testimony of a large number of witnesses and carefully weighed the evidence. The present application seeks to bring this case for review to this Court *in order that the facts may be gone into and the findings of the tribunals below reviewed and reversed.* This is something which it has been repeatedly decided this Court will not do.

The Petition for Writ of Certiorari should be denied.

Dated, Washington, D. C., April 12th, 1909.

W. Wickham Smith,
John K. Maxwell,
Attorneys for Respondent.

W. Wickham Smith,
Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES, PETITIONER,
v.
BERNARD CITROEN. } No. 796.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

MEMORANDUM.

The petitioner is impelled to except to two of the respondent's statements in the brief in opposition to the petition. Under the caption "Corrected Statement of Facts," at page 9, he states:

> The petition filed by the Solicitor-General does not quite correctly state the facts as established by the record. Following are some of the inaccuracies:
>
> In the opening paragraph the pearls are referred to as having been purchased abroad as a necklace and imported and redelivered to the purchaser in this country as the identical pearls so worn and purchased.
>
> Mrs. Leeds, who now has the pearls, testified as follows:
>
> * * * * *

Mrs. Leeds's testimony immediately following the last extract made by the respondent confirms the statement in the petition to which he refers that the

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pearls were worn and purchased abroad as a necklace and were imported and redelivered to the purchaser in this country as the identical pearls so worn and purchased. That part of her testimony is as follows (R., 313–314):

Q. I mean the bargain was made there?

A. The bargain was made there, but the money was not paid.

Q. Then, you did buy the necklace in Paris?

Mr. SMITH. I object to that. She has stated the facts. I object to this counsel putting inferences into her mouth. I object on the ground that it calls for an opinion or conclusion of the witness on a question of law when the facts are already established by the evidence.

The REFEREE. If you object to it on the ground that it is leading, I will sustain that; but on the ground that it calls for a legal opinion instead of a fact, I will overrule that.

Mr. SMITH. I take an exception.

A. Well, the bargain was made in Paris; my pearls were turned over in Paris, and the others I was to have in America.

Q. You mean the 37 pearls?

A. I mean the 37 pearls I was to have in America.

Q. When were the 37 pearls last shown you in Paris, Mrs. Leeds?

A. You mean when did I last see them?

Q. Yes, as near as you can recollect?

A. In May, I think, 1906.

Q. And those were the pearls that were delivered to you in Newport?

A. Yes. It was the latter part of May or first part of June.

Q. And those pearls were worn by you in Paris?

A. Yes.

Q. As a necklace?

A. Yes.

Respondent furthermore inexactly states the Government's position. He says at page 13 of the brief in opposition:

> The Government's position in this case substantially is that this collection of pearls, by reason of the fact that they had been temporarily strung and worn abroad, should have been held dutiable at 60 per cent, whereas a precisely similar collection of pearls of the same character and value which had not been worn abroad would be dutiable at 10 per cent. In other words, that merchandise should be held dutiable not according to its condition at the time of importation but to facts subsequently developed as to the previous history of the merchandise. Any such construction of the law would throw the whole machinery of collecting duties into uncertainty and chaos.

The contention of the Government is that the pearls in issue, which, after being worn and purchased abroad as a necklace, were imported, packed in the order of graduation, as taken off the string for redelivery to the purchaser in this country, and not indiscriminately mixed for the general stock of pearls of a jeweler to be made into different articles of jewelry, are shown both by their condition at the time of importation and by the evidence and intention of the

importer to be classifiable under paragraph 434 of the tariff of 1897 by enumeration therein as jewelry, or as parts of jewelry if the absence of a string and clasp of insignificant value precludes their classification as jewelry; and that if the similitude clause shall prevail, notwithstanding it is applicable only to articles not enumerated in the tariff, the pearls are nevertheless classifiable under paragraph 434 as most resembling jewelry, or parts thereof, or pearls set or strung, and not under paragraph 436, as most resembling pearls in their natural state, strung or set.

LLOYD W. BOWERS,
Solicitor General.

APRIL, 1909.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PETITIONER,
v.
BERNARD CITROEN. } No. 30.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT OF THE CASE.

This controversy arises out of the importation of 37 pearls and involves $110,355.

Those portions of the tariff act which are here material read as follows:

> PAR. 434. Articles commonly known as jewelry, and parts thereof, finished or unfinished, not specially provided for in this Act, including precious stones set, pearls set or strung, and cameos in frames, sixty per centum ad valorem.
>
> PAR. 436. Pearls in their natural state, not strung or set, ten per centum ad valorem.
>
> SEC. 7. That each and every imported article, not enumerated in this Act, which is

> similar, either in material, quality, texture, or the use to which it may be applied to any article enumerated in this Act as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; and if any nonenumerated article equally resembles two or more enumerated articles on which different rates of duty are chargeable, there shall be levied on such nonenumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest rate of duty.

The Government insists that the pearls should be assessed at 60 per cent ad valorem under paragraph 434, or under section 7, as most resembling "jewelry, and parts thereof * * * including * * * pearls set or strung," or as resembling "pearls set or strung" *equally as much as* "pearls in their natural state, not strung or set," while the importer insists that they should be assessed at 10 per cent ad valorem under paragraph 436 and section 7 as *most* resembling "pearls in their natural state, not strung or set."

The appraiser returned them as "drilled pearls—10 per cent," but the collector classified them by similitude as pearls, set or strung, or jewelry dutiable at 60 per cent ad valorem (R., 8), and against this classification the importer protested.

The evidence before the Board of General Appraisers was in substance as follows:

The pearls were collected and assembled for a syndicate of four persons. (R., 33.) They were

drilled, polished, well graduated in size, and fairly well matched in color and quality for large pearls. (R., 21–24, 89–92, 116, 117, 126, 127, 130, 135, 170, 212, 253, 258.) They were displayed as a collection for a necklace, were put in the hands of several dealers to sell, in accordance with the custom of the trade, and, after negotiations with various persons, were sold to Mrs. William B. Leeds. (R., 22, 24, 35, 38, 61, 69, 114, 129, 138, 190, 192.)

Bernard Citroen imported them packed by sizes, unstrung, in five pearl papers, in a small box, the usual method of transportation. (R., 21, 43, 81, 82.) The several packages were separately valued in the invoice. (R., 165.)

The total invoice value is 1,143,366 francs, or $220,000. (R., 9.) Citroen made the entry and paid the duties on that value and delivered the pearls to Mrs. Leeds at Newport. (R., 22, 72, 165.)

The majority of the Board of General Appraisers sustained the protest on the ground that while the evidence showed that for several years these pearls were offered for sale collectively, and were even strung on silk cords, yet they were not so strung as jewelry, but in order to show their desirability as a collection suitable for a necklace. (R., 270, 275.) One general appraiser dissented from this view, being of the opinion that they were dutiable at 60 per cent ad valorem. (R., 277–281.)

An appeal was prosecuted to the Circuit Court, and there, by order of the court, the following additional testimony was taken on behalf of the Government.

It was proved by Milton P. Bagg, a dealer in jewelry, that about four years previous thereto he was shown these pearls by Hugo Citroen at his place of business in Paris "graduated, being shown in a necklace form;" that it was the most important collection he then saw on exhibition for sale; that no dealer has more than one such collection in ten years; *that the pearls were shown to him as a necklace, and were in the usual condition in which pearls are usually exhibited as a necklace;* that some time after this Bernard Citroen, brother of Hugo Citroen, brought to New York an imitation necklace, being an imitation of these pearls, by which he was trying to sell them, and that it was represented as a "historic" necklace, and was well known as a necklace. (R. 291, 295, 296, 297, 299, 300, 302.)

Mrs. Leeds, the present owner, testified that she was in Paris in the spring of 1906; that she went to the place of business of Hugo Citroen, and was there shown a collection of 37 pearls; that they were then loose, but she afterwards saw them at Cartier's arranged on a string in the form of a necklace, with clasps so that the ends of the string could be fastened together, and she tried them on as a necklace to see how they appeared; that they were sent to her at the hotel a number of times; *that she wore them a great deal as a necklace; that the purchase was made in Paris but they were to be delivered in America, the purchase price being $340,000; that she turned over in Paris in part payment another pearl necklace for which she had paid $52,000 or*

$54,000; and that she saw the pearls no more until they were delivered to her in Newport, when they were represented to be the same necklace that she had worn in Paris. (R., 308–314.)

The case was tried by Circuit Judge Lacombe and the action of the board was reversed, the Circuit Court holding the pearls dutiable at 60 per cent ad valorem.

On appeal to the Circuit Court of Appeals, the judgment of the Circuit Court was reversed, and the classification and rate fixed by the Board of General Appraisers were affirmed.

BRIEF AND ARGUMENT.

I.

The Circuit Court of Appeals improperly adopted as the facts the findings of the Board of General Appraisers.

With reference to the finding of facts by the Board of General Appraisers, the Circuit Court of Appeals said:

> We feel constrained, however, to follow the former decisions of this court in the Tiffany and Neresheimer cases, but we see no reason to disturb the conclusions of the board upon the facts. As before stated, they heard all the important witnesses except Mr. Bagg and Mrs. Leeds. We do not consider the testimony of the latter of sufficient importance to justify us in departing from the rule that the finding of the board upon the facts will not be set aside unless against the weight of evidence. (R., 184.)

The rule with reference to the effect to be given to the finding of facts by the Board of General Appraisers is thus stated by the Circuit Court of Appeals, Seventh Circuit, in *Apgar et al.* v. *United States* (78 Fed., 332, 334):

> This court ought not, and will not, review a finding of facts made by the board of general appraisers *and not controverted by new evidence in the circuit court*, except it be manifest that the decision of the board of appraisers is unsupported by the evidence, or is clearly against the weight of evidence.

According to this rule, if there be new and material evidence introduced on the trial in the Circuit Court, no special weight is given to the findings of the Board of General Appraisers; whereas the Circuit Court of Appeals in the present case started out with the presumption that the findings of the board were correct, and over against this presumption placed the new evidence introduced before the board, and determined therefrom whether such new evidence was of sufficient weight to overcome the presumption arising from the finding of the board. Manifestly, this was not the correct method of determining the facts. There being new evidence introduced, the court should have started out with no presumption, but should have taken the evidence before the board and the new evidence introduced on the hearing, and have weighed it altogether, and have determined therefrom what the true facts were.

The new evidence introduced in the Circuit Court was, in substance, that the pearls were assembled

into a complete necklace and were a necklace, and were worn abroad as such many times by Mrs. Leeds, the purchaser, before importation, and were brought to this country and redelivered to her as a necklace at Newport, in pursuance of the contract of sale made in Paris.

This new evidence was the most vital of all that was offered on behalf of the Government. As held by Judge Lacombe, it was directly upon the turning point in the controversy, and conclusively showed that the Government's contention was the correct one. *Had this evidence been before the board, the board would, according to its own declaration, have overruled the protest and affirmed the collector's classification.* The majority of the board said:

> Turning from the proper classification for duty of drilled pearls as an academic question, we hold that, had these 37 pearls been assembled into a completed necklace abroad, and worn as such, they would, on the authority of *Tiffany* v. *United States* (112 Fed., 672) be dutiable as jewelry by similitude. (R., 154.)

II.

The decision of the Circuit Court of Appeals conflicts with the well-recognized rule laid down in other cases for the assessment of duties upon pearls.

Tiffany v. *United States* (103 Fed., 619) involved a similar question to the present one; and the opinion of Judge Lacombe contains so clear an exposition

of the meaning of these statutes, and especially of section 436, that it is quoted in full, to wit:

> The question as to the commercial meaning of the phrase "pearls in their natural state" is of no assistance to the disposition of this case, because with practical unanimity all the witnesses agree that that phrase was not known to the trade when this act was passed. Act July 24, 1897, ch. 11. It was a phrase coined by Congress, wholly unknown to merchants; and the mere fact that since the passage of the act the merchants engaged in this trade have given a meaning to the words used by Congress which seems to them reasonable and fair, and which has been, perhaps, produced somewhat by the influences of their own business, makes no difference. We must take the words in the sense in which Congress uses them; and inasmuch as it appears that they had no commercial meaning at that time, we must take them in their plain, natural meaning. The selection made by Congress seems to have been an unfortunate one, for it leaves the situation, as has been pointed out, such as to fix a higher duty on the lower article; but unless out of the language which Congress has used, a meaning other and different from that can be fairly read, the court within its powers cannot correct the difficulty. Now, the suggestion which might naturally be made that paragraph 434 having provided for pearls set or strung, paragraph 436 provides for pearls that are not strung or set, and that that is the dividing line, will not do. That division, or a similar one, seems to have been quite sat-

isfactory in the past. In the act of 1890, by paragraph 453, pearls were taxed 10 per cent., and the only distinction or only advance beyond that was jewelry. In the act of 1894, pearls, including those that are strung but not set, are taxed at 10 per cent., and pearls set taxed at 30 per cent. Up to that time "set" and "strung" seem to have been the adjectives which marked the point of division. But Congress, for some reason or other—what we cannot tell—was not satisfied to preserve that division, but added in paragraph 436 a provision that the pearls must be not only unstrung and unset, but also must be pearls in their natural state. Of course, there is no escape from the proposition that a drilled pearl is not a pearl in the natural state. As the witness Benedict put it, it is a pearl with a hole, and nature never made the hole. So that, if these words are to be taken in their natural meaning, according to the grammatical structure of the sentence, we have to find, in order to place pearls within the 10 per cent. clause, that they are not only not strung and not set, but also are actually pearls in their natural state. Now, the result of that undoubtedly is that Congress has not, as presumably it intended to do, covered all kinds of pearls in the various jewelry paragraphs, and has left a kind of pearl to be covered by one of the catch-all paragraphs. That the court cannot correct. If the court is satisfied that Congress meant to cover all kinds of pearls in some way or other, the fact nevertheless remains that it has failed to do so, and

> the court cannot correct it. We must take the phrase in the sense in which Congress apparently used it. That being so, the decision of the board of general appraisers is affirmed.

There is a difference in the views there expressed by Judge Lacombe and those expressed by the Circuit Court of Appeals in this case, in this: Judge Lacombe was of the opinion that paragraphs 434 and 436 did not of themselves cover all classes of pearls, but that there may be pearls in such condition as to necessitate their assessment under the similitude clause, while the Circuit Court of Appeals in the present case expressed the view that—

> It would appear that the intent was to provide for all pearls in the two paragraphs; 434 covering pearls which had become jewelry by being set or strung in pins, rings, necklaces, etc., and 436 covering all other pearls. The words "natural state" may have been intended to distinguish the pearls from those in the quasi-artificial state to which they had been translated by becoming jewels or parts thereof. Unquestionably there are difficulties attending such a construction, but we think them less formidable than those at present existing. With the law so construed there would be a logical, reasonable, and workable system. (R., 184.)

It is respectfully submitted that Judge Lacombe's construction was correct, in that a perforated pearl is not in its natural state, although the cost of perforation is but trifling. The amount of expense can

not be considered in determining whether the pearl has been changed from its natural state. In *Seeberger* v. *Farwell* (139 U. S., 608) it was held that woolen goods into which there had been woven but 6 per cent of cotton were assessable under a paragraph which related to women's and children's goods, etc., "composed in part of wool," the court expressing the opinion that, as Congress had enacted this paragraph to apply to all goods which were not composed *wholly* of wool, the court had no power to deviate therefrom and bring within the paragraph cloth which contained any amount of cotton, though the percentage may have been trifling.

Consequently, as these pearls were perforated, they were not when imported in the natural state, and do not fall within paragraph 436.

Tiffany v. *United States* (105 Fed., 766) was another case involving the importation of drilled or pierced pearls. They were classified by the collector at 20 per cent ad valorem as "articles manufactured in whole or in part." It was insisted by the importer, first, that they should be classified as pearls in the natural state under paragraph 436, or, if not falling within the terms of said paragraph, they should be so classified under the similitude clause. The district attorney admitted that the similitude clause should apply before the general clause which referred to "articles manufactured in whole or in part," and Judge Coxe held that the imported pearls bore a closer resemblance to strung pearls than pearls in their natural state, expressing

his views with reference thereto in the following language:

> The burden is upon the importer to prove that his contention is correct, and if he fails in sustaining this burden the action of the collector stands, even though it appear that the collector also has selected the wrong paragraph. In other words, in order to succeed the importer must show by a preponderance of proof that his importations bear a greater similitude to pearls in their natural state than to any other article enumerated in the act. The only difference between a drilled pearl and a pearl in its natural state is that the former has a hole in it, but there is no difference whatever between a drilled pearl and a strung pearl; the two are identical. No difference in the quality, texture or use to which the two pearls are applied can be predicated of the fact that one has a cord through the hole and the other has not. Place drilled pearls on a cord and they become strung pearls, take strung pearls off the cord and they become drilled pearls.

From the judgment of the court an appeal was prosecuted to the Circuit Court of Appeals, and the case was there reversed by Judges Wallace, Lacombe, and Townsend, Judge Lacombe delivering the opinion of the court. The ground of the reversal is thus stated:

> We think the court erred in taking as the standard of comparison for these pearls, which are not matched or selected, and are therefore

> to be considered individually, those aggregations of individual pearls which have been strung into an article of jewelry. The evidence shows that there has to be a careful process of assortment and selection as to size, quality, luster, shape, etc., which takes time and skilled labor, so that the string of pearls thus produced is worth more than the aggregate values of the individual pearls composing it. There is no difference between a single drilled pearl and a single strung pearl, but between a drilled pearl and any number of unmatched drilled pearls and the strung pearls of paragraph 434, which are commonly known as "jewelry," we think there is a greater difference than between the drilled pearl and the pearl in its natural state. (*Tiffany* v. *United States*, 112 Fed., 672.)

In *Neresheimer* v. *United States* (131 Fed., 977) two collections, one containing 39 and the other 45 drilled pearls, were first assessed by the collector as "articles manufactured, in whole or in part, not provided for." The importers protested, claiming that they were dutiable by similitude under paragraph 436, as "pearls in their natural state, not strung or set." After the rule for classifying pearls had been declared in the *Tiffany case* (112 Fed., 672), the collector reliquidated and assessed duty upon the pearls at 60 per cent under paragraph 434; and the Board of General Appraisers found the facts to be as follows:

> (1) That the pearls the subject of each of these protests are drilled, and have, by a careful process of selecting, matching, and assortment

as to size, quality, luster, shape, etc., which required time and skilled labor, been so assorted that the collection of pearls thus produced is worth more than the aggregate values of the individual pearls composing it.

(2) That in the condition imported they bore a closer similitude to pearls strung than to pearls in their natural state.

(3) That the pearls the subject of these protests are identical in material with both "pearls strung" as provided for in paragraph 434, and "pearls in their natural state," as provided for in paragraph 436 of said act.

The Circuit Court, District Judge Hazel sitting, found that the evidence, while conflicting, justified this finding of facts; and further held that under the rule laid down by the Circuit Court of Appeals in the *Tiffany case*, the pearls were assessable under paragraph 434. On appeal the judgment was reversed, Judges Wallace, Lacombe, and Coxe sitting, and Judge Lacombe delivering the opinion of the court. The ground of reversal was that the evidence showed that the finding of facts by the Board of General Appraisers was incorrect, in that while there had been a selection of the pearls, yet it was not with a view to their constituting a necklace or any article of jewelry, the court expressing its views of the facts and restating the rule covering the classification of pearls in the following language:

> The circumstance that the pearls were exceptionally large and fine apparently had great weight with the board. Undoubtedly it must have been by a process of selection

and assortment that large fine pearls were sent instead of smaller and cheaper ones. They were of different sizes, and not all of the same color. They were so numerous that in each lot there were pearls which closely matched each other in size. But the test suggested in the Tiffany Case is not such an assortment and selection as brings together a lot of pearls, each of which is so well chosen for luster, size and color that it will command a high price. *The assortment and selection must be such as to produce a collocation of pearls similar to the collocation found in the articles of jewelry known as necklaces or strung pearls, where time and skilled labor have been applied to produce not merely a collection, but an aggregation such that "the string of pearls thus produced is worth more than the aggregate values of the individual pearls composing it."* (*Neresheimer & Co.* v. *United States*, 136 Fed., 86, 89.)

It appears, therefore, that in the various cases relating to the assessment of duties upon drilled pearls, three theories have been advanced:

First. The one adopted by Judge Coxe, sitting as circuit judge in the second *Tiffany case* (105 Fed., 766), that from the fact that they are drilled and may readily become strung pearls by placing them upon a string, such pearls are more similar to strung pearls than to pearls in their natural state, and under the similitude clause are assessable under paragraph 434.

Second. The rule adopted by the Circuit Court of Appeals in the same *Tiffany case* and approved in

the *Neresheimer case*, and applied by Judge Lacombe, sitting as the circuit court in the present case, that such pearls must be classified under the similitude clause as belonging to either paragraph 434 or 436, the class to be determined by whether the pearls have been assorted and selected in such way as to produce a collocation of pearls similar to the collocation found in articles of jewelry known as necklaces or strung pearls, where time and skilled labor have been applied to produce an aggregation such that the string of pearls thus produced is worth more than the aggregate value of the individual pearls composing it; and

Third. The method suggested, but not followed, by the Circuit Court of Appeals in the present case, that paragraphs 434 and 436 embrace all kinds of pearls, and the similitude clause has no application, paragraph 434 including only pearls which have become jewelry by being strung or set in rings, necklaces, and other jewelry, and paragraph 436 embracing all other pearls.

That this last method is not the correct one, is clearly shown by Judge Lacombe in the first *Tiffany case*, the opinion in which is quoted above in full. A reference to the provisions relating to pearls in the previous tariff acts confirms the view there expressed. Paragraphs 452 and 453 of the act of October 1, 1890, chapter 1244 (26 Stat., 600), with reference to pearls, provided:

> 452. Jewelry. All articles, not elsewhere specially provided for in this act composed of precious metals or imitation thereof, whether

set with coral, jet, or pearls, or with diamonds, rubies, cameos, or other precious stones, or imitations thereof, or otherwise, and which shall be known commercially as "jewelry", and cameos in frames, fifty per centum ad valorem.

453. Pearls, ten per centum ad valorem.

Paragraphs 337 and 338 of the act of August 28, 1894, ch. 349 (28 Stat., 534), with reference to pearls, provided:

337. Pearls, including pearls strung but not set, ten per centum ad valorem.

338. Precious stones of all kinds, cut but not set, twenty-five per centum ad valorem; if set, and not specially provided for in this act, including pearls set thirty per centum ad valorem.

Except as to the rate of duty on set pearls, there seems to have been no difference between the provisions of these two acts, except in the last act strung pearls are specifically mentioned as being assessable at 10 per centum ad valorem.

There is, however, a marked difference between those acts and paragraphs 434 and 436 of the act of 1897 under which these pearls were assessed. Paragraph 434 provides:

Articles commonly known as jewelry * * * including * * * *pearls set or strung* * * * 60 per centum ad valorem.

Paragraph 436 provides:

Pearls *in their natural state*, not strung or set, ten per centum ad valorem.

Here strung pearls are removed from the 10 per cent class to which they expressly belonged in the act of 1894 and placed in the class upon which is assessed a higher rate of duty. Nor is the phrase "in their natural state" without a meaning. *Its object clearly was to set a limitation upon the kinds of pearls that were assessable under the provisions of paragraph 436 without the aid of the similitude clause and to prevent the mere fact that pearls were not upon a string or set in metal from being taken as conclusive against their assessment under paragraph 434; and its design was thus to have the classification of pearls which were not in their natural state and which were not actually strung or set determined under the similitude clause.*

It was in accordance with this view that the rule of classification laid down by Judge Lacombe in the three opinions delivered by him, one on the circuit and the other two while sitting on the Circuit Court of Appeals, was adopted; and while in the present case the Court of Appeals intimated that if it were an original question it would adopt a contrary rule, yet it claimed to follow the rule previously laid down, and decided the case upon a question of fact, holding that the facts as found by the Board of General Appraisers were not overcome by the subsequent evidence, notwithstanding Judge Lacombe, who had carefully considered the evidence before the Board of General Appraisers, as well as that introduced for the first time before him, had found directly to the contrary, as shown by the following language:

This case forcibly indicates the defects of the old practice whereby the proofs were taken in part before the Board of General Appraisers and in part before the court after the board's decision was rendered. The opinion of the two general appraisers who united in reversing the collector—the third general appraiser dissented—indicates that they would probably have decided the other way "had these 37 pearls been assembled into a completed necklace abroad and worn as such." The brief additional testimony introduced in the circuit court conclusively establishes that proposition, and upon all the proofs the 37 pearls cannot, under the rules laid down by the court of appeals in *Tiffany* v. *United States* (112 Fed. 672), and *Neresheimer* v. *United States* (136 Fed. 86), be classified even by similitude, as "pearls in their natural state." (R., 176.)

III.

The finding of fact by Judge Lacombe is not only abundantly sustained by the evidence, but when the evidence is taken as a whole no other inference can be drawn therefrom.

Years were spent in the collection of these pearls. They were assorted and selected as to size, quality, etc., and kept intact for years, and became well known in the trade as a collection for a valuable necklace. They were strung and worn abroad and purchased as a necklace at a great price, including duties, under an executory contract requiring redelivery to the purchaser in this country on payment of the balance due. *They were not, and under the contract, could*

not be, imported for the general stock of pearls of a jeweler, to be made up into different articles of jewelry. They were carefully packed in five pearl papers, by sizes, the largest in one paper, the six next in size in another paper, and eight, ten, and twelve in the other papers, respectively, in the order of graduation. *The status of these pearls is the same as if they had been imported by Mrs. Leeds herself, after having been purchased and used as a necklace, instead of by Citroen for redelivery to her.*

The importer undertook to establish that pearls in the form of a necklace are less valuable than the aggregate value of the individual pearls. The burden of proof was on him. The testimony is contradictory. Some witnesses said the pearls were worth less or were doubtful (R., 105, 109, 132, 133, 151, 159, 160, 161); and others said they were worth more as a necklace (R., 234, 235, 241, 242, 243, 261). The importer and another witness said the value was the same. (R., 178, 179, 197.) The pearls as a necklace were sold for $120,000 (only $22,000 of which represented duties at 10 per cent) more than the wholesale value of the individual pearls as invoiced and entered. Judge Lacombe said (R., 318):

> Reference is made to testimony to the effect that a collection of pearls will often be sold to one purchaser at a less price than aggregate would amount to were each pearl sold separately. There is nothing surprising in the circumstance that a dealer will be content with a smaller percentage of profit if he can sell

> thirty-seven exceptionally large and expensive pearls in a single transaction than he would expect if he had to dispose of them individually, possibly having to wait many months before all were sold. It is a mere "wholesome discount," and does not indicate that the intrinsic value of the collection is reduced by sorting, selecting, and arranging. If it were, we may be very sure that the dealers would not thus waste their time and skill and the interest on their money.

Some of the most material evidence relating to the similarity of these pearls to a necklace or strung pearls, and whether or not they constitute a necklace, and the increased value arising from their selection, is as follows:

Alfred H. Smith, *who was a witness for the importer*, testified:

> Q. Now, in making up a necklace, you as an expert would be able to tell me about what would be the first thing that you would do. Suppose you have these 37 pearls, or any other 37 pearls, or any other aggregation of pearls, in what way would you make your first selection? The largest you had and then match up to that, or the smallest you had and match to that, or how would you do?
>
> A. Well, you see, I would not start to make a necklace like that for stock. It would generally be with some customer for a starting point, as for instance, there is a necklace in this town where we commenced with twenty-five thousand dollars and it is going up to five hundred thousand dollars.

Q. And is that the usual method of forming a necklace?

A. No, I don't think that it is. But if I had the pearls that I know would go into a certain necklace, I would show it to the parties and say here is a desirable thing to go into your necklace. So these necklaces are generally a matter of growth.

Q. Now, would you say as a dealer, from your experience as a dealer, that these 37, this aggregation of pearls, was a large necklace?

A. Oh, surely.

Q. No doubt about that?

A. No doubt that it was a large necklace. (R., 74.) Marginal pages 129

* * * * *

Q. You would think, would you, that these 37 pearls would produce an assemblage of pearls similar to what would be known as a pearl necklace, would you?

A. Oh, certainly, we would consider it as a pearl necklace or collection of pearls for necklace. (R., 80.) 39

* * * * *

Q. When pearls are assembled, graduated and matched, as these 37 pearls were, is it necessary to constitute them a necklace as known in the trade to have them fitted with clasps?

A. Well, there is a very nice point you have.

Q. In other words, would it be a completed necklace, matched and graduated as it was, as you saw it, without attaching the clasps?

A. I would say this, if I were showing a string of pearls without the snap on it, on a blue ribbon, I would say that is a beautiful necklace; I wouldn't take much account of the snap.

Q. You would regard it as a necklace independent of the snap?

A. I wouldn't regard it in a strict sense as a completed necklace.

Q. But you would show it to your customer as a necklace?

A. I would say that it was a beautiful collection of pearls for a necklace. I don't know if I would use the word "necklace."

Q. You think you would say "that is a beautiful collection of pearls for a necklace"?

A. I should say so, yes. Are you talking about this special necklace?

Q. Any necklace.

A. I say it was, I believe, a collection of pearls for a necklace.

Q. And would you say with reference to these 37 pearls as you saw them that this was a costly beautiful collection of pearls for a necklace or suitable for a necklace?

A. Yes, I would use that expression. I wouldn't say that it was the best in the world. (R., [redacted] 141–142)

Gustav F. Eisenmann, a New York importer of precious stones, testified on behalf of the Government:

Q. Then having collected them so that they are graduated in size and matched as to color, at what point do they cease to be separate

pearls and become a necklace, in a trade sense? What more has to be done, if anything, besides the matching of them as to color and grading them as to size, to bring them to the point where they would be recognized in the trade as a necklace?

A. Well, for instance, a necklace of large pearls like those 37 has to be about 15 to 16 inches; that is generally considered the size of a necklace; and if these pearls match they are considered a necklace, if they are selected for that purpose.

Q. Is it your idea that the mere matching of them as to color, the grading of them as to size, providing they were taken together making the length that you speak of, does that constitute a necklace without the form of stringing or putting on of the clasp?

A. Yes; if you have an order for a necklace and if you fix it in that way, then afterwards it is strung and shown that way.

Q. Is it ever a necklace, in a trade sense, before it is strung?

A. Before it is strung, yes; I have selected pearls that way, even undrilled, and have shown them in a box and sold them as a necklace.

Q. The trade generally, so far as you understand the usage, call an aggregation of pearls such as you have described, but unstrung, a necklace?

A. Yes, sir. (R., ~~129, 130.~~) 227 - 228

David J. Frankel, a New York importer, testified:

Q. Now, speaking of these 37 pearls as having been drilled and assuming them to have been matched as to size and color, and actually

strung on a cord, would you say that that would constitute a necklace?

A. Yes; but before I would make an answer to that, I would rather see the article and then I would be able to tell whether it was a necklace. One man may match a necklace and it may not be a necklace; but assuming that they are all matched and they graduate right, why then they constitute a necklace.

(The question is repeated to the witness.)

A. Yes, sir.

Q. Would the fact that the cord was taken from such a necklace change the article and make it a different article, or would it still be a necklace?

A. Do you mean if these pearls were laid out and the cord taken out, would it make any difference?

A. No.

Q. In your judgment it would still be a necklace?

A. Yes.

Q. Assuming that this collection of 37 pearls had been matched as to size and color and strung, and the string taken out, the pearls being brought over in five packages in a box, what would you say as to whether those pearls were still a necklace or not?

A. Were they the same identical pearls?

Q. Yes.

A. If they were matched up again it would be the same thing.

Gen. Appr. McClelland. Would the fact that they had been unstrung and put in five separate packages, the aggregation being still together

with the exception of being separated into different papers, alter the fact, in your mind, that they were still a necklace?

The Witness. No. (R., ~~148, 149~~.)

William B. Treadwell, a Government examiner of precious stones, testified that there was no question but that these pearls were suitable for a necklace; that "they were drilled; they were graduated; and the sheen and everything made them a necklace"; that he was familiar with pearl necklaces and had been for 33 years, and knew the requisites of a pearl necklace so far as graduation and color are concerned; and, when asked:

> Q. Did you make such an examination of this aggregation of 37 pearls that will enable you to say, as an expert, whether they were suitable to be made into a necklace?

He answered:

> A. I should like to say to this board that an aggregation of that kind, of that value, and of that beauty and of that sheen, and of that character and of that aggregation, that they could not be intended for anything else. (R., ~~148, 149~~.)

Milton P. Bagg, a dealer in precious stones in New York, testified that he had examined this collection of pearls in Paris at Citroen's place of business; that they were talked about among the trade, and that "it was the most important collection at that time on sale"; that *they were shown to him as a necklace, and that they were in the usual condition in which*

a pearl necklace is exhibited by himself and by dealers generally as a necklace. (R., ~~166, 167, 168.~~) 29-30

Mrs. Nonnie Stewart Leeds, the purchaser of the pearls, testified (omitting objections and the court's rulings thereon) in full as follows:

By Mr. NICHOLS:

Q. Mrs. Leeds, were you in Paris a year ago last spring?

A. Yes.

Q. And did you go to the place of business of Mr. Hugo Citroen?

A. Yes.

Q. Were you shown there a collection of 37 pearls?

A. Yes.

Q. Will you describe in your own way the condition in which those pearls were?

A. How do you mean for me to describe in my own way?

Q. How were they arranged, the pearls?

A. I have seen them loose and I have seen them on a string, both ways; that day at Citroen's they were loose.

Q. Then you saw them at some other place?

A. Yes, I saw them at Cartier's on the Rue de la Paix.

Q. Were they on a string at Cartier's?

A. Yes.

Q. How were they arranged on the string—in the form of a necklace?

A. Yes.

Q. Was the string arranged so that you could wear the pearls as a necklace?

A. Yes.

Q. Did you try it on as a necklace to see how it appeared?

A. Yes.

Q. Were there clasps connected with the strings so that it could be fastened together at the ends?

A. Yes.

Q. Where else did you see this necklace, if anywhere, in Paris?

A. I saw it in no other place but Paris, except at Cartier's and Citroen's, the two places, and at the hotel; *it was brought to the hotel for me to see several times.*

Q. In what condition was it when it was brought to the hotel?

A. They were brought both on the string and off the string; it was strung up at odd times, then it was taken apart and other pearls were put in and others taken out, so it was strung several times.

* * * * *

Q. Did you wear it at any time?

A. Abroad.

Q. Yes.

A. Yes.

Q. On what occasion?

A. Oh I wore it—I don't know any particular occasion; I wore it a great deal.

Q. When did you first see—did you see it again in this country?

A. No; I didn't see it again in this country until it was given to me.

Q. In this last summer?

A. No, it was a year ago last summer.

Q. I mean a year ago last summer?

A. Yes.

Q. At Newport?

A. At Newport it was given to me.

Q. Was it the same necklace that you had seen and worn in Paris?

A. I think it was; supposed to be.

Q. It was represented to you to be?

A. To be the same pearls, yes.

Q. By whom was it delivered to you at Newport?

A. It was delivered by Mr. Citroen.

Q. Did he represent that it was the same necklace that was made up that day and worn by you in Paris?

A. He said it was the same pearls that I had worn in Paris and had been delivered to me in Paris and that were given to me in Newport.

Q. Do you recall how many there were?

A. There were thirty-seven that I had abroad and thirty-seven were delivered to me in Newport; and I have six more now on the string.

Q. The six that you added since?

A. Six that I added since; so that at present there are forty-three on the string.

Q. Were they offered to you for sale in Paris?

A. What? The pearls?

Q. Yes.

A. Yes.

Q. And they were shown you for that purpose, I suppose?

A. Yes.

Q. Was any price mentioned?

A. Yes.

* * * * *

Q. Mrs. Leeds, have you any personal objection to giving this information?

A. No.

Q. At what price were they offered?

A. You mean what price they were offered? They were offered at various prices. The first time I looked at the pearls—of course, they were changed from time to time—years, long before they were purchased, two or three years before, I saw the pearls at odd times when I have been over there, and at first of course they asked a great deal more than was paid for them.

* * * * *

Q. How much was paid for them, unless you have a personal objection to stating?

A. I have no personal objection. It was $340,000 paid for them; but that was—I turned over a string of pearls which I had on the payment, so there wasn't that much in cash paid; the pearls that I turned over to them, I think, were valued at $52,000, but I am not sure whether it was $52,000 or $54,000, but it was one of the two; and the pearls I turned over to them I had bought at Tiffany's several years before, so the duty had been paid to Tiffany. So I paid the difference between $340,000 and the $52,000, which would make——

Q. Where did you turn over this necklace in part payment?

A. I turned over this necklace in Paris.

Q. And the purchase was made there, wasn't it?

A. I said I would take the pearls in America; the purchase was not made there.

Q. I mean the bargain was made there?

A. The bargain was made there, but the money was not paid.

Q. Then you did buy the necklace in Paris?

* * * * *

A. Well, the bargain was made in Paris; my pearls were turned over in Paris, and the others I was to have in America.

Q. You mean the thirty-seven pearls?

A. I mean the thirty-seven pearls I was to have in America.

Q. When were the thirty-seven pearls last shown you in Paris, Mrs. Leeds?

A. You mean when did I last see them?

Q. Yes, as near as you can recollect.

A. In May I think, 1906.

Q. And those were the pearls that were delivered to you in Newport?

A. Yes. It was the latter part of May or first part of June.

Q. And those pearls were worn by you in Paris?

A. Yes.

Q. As a necklace?

A. Yes. (R., ~~171–174~~.) 307 – 314

IV.

When an article is separated into its component parts, which parts are imported separately, they are assessable for duty as if the article were imported as a whole.

In *United States* v. *Schoverling* (146 U. S., 76) defendants imported certain articles described in the entry as "12 finished gunstocks, with locks and mountings." The collector classified them as "metals and manufactures of firearms." The importers protested upon the ground that the articles were only parts of guns and were dutiable as "manufactures, etc., composed wholly or in part of iron, etc." It appeared that the gun barrels, which were intended to be united with the stocks in question, were purchased from another firm and imported separately, and the Circuit Court found that there was no evidence that the articles were ever assembled or brought together with the gun barrels while abroad, and that for all that appeared the gunstocks might have been bought from one manufacturer and the barrels from another, and the protest was therefore sustained and the judgment was affirmed by this court.

United States v. *Irwin* (78 Fed., 799; C. C. A., 2d Cir.) was also a case which involved a shipment of different parts of guns. The Board of General Appraisers found that the shipment consisted of different parts of incomplete firearms and that there was no evidence to show that they were ever assembled or brought together as entireties before impor-

tation. Upon appeal by the Government, further evidence was introduced, which, together with the evidence previously taken, showed that many entries comprised gun barrels and gunstocks coincident in number, shipped for the importer on the same steamer under separate invoices, the barrels being in cases by themselves and the stocks in cases by themselves invoiced as gunstocks. In some of the entries the barrels and stocks were marked with identifying numbers, so that the appropriate barrels could be selected for the appropriate stocks, respectively, and the two parts be united into a complete gun merely by inserting the barrels in the stocks. There were other entries in which the barrels and stocks were shipped in separate cases and invoiced separately, but not coincident in number, there being in some entries more barrels than stocks and in others more stocks than barrels. The court said:

> Upon the evidence in the record, we entertain no doubt that the importations in controversy were breech-loading shotguns, which before exportation were in a completed condition, ready for the market or for the sportsman's use, in number equal to that of the stocks or barrels, but that the parts were detached, shipped in separate cases, and invoiced separately to enable the importer to enter them as invoiced, escape the payment of the duty upon guns, and, after importation, reassemble the parts.

And in distinguishing that case from the *Schoverling case*, the court said:

> In the Schoverling case it did not affirmatively appear that the stocks and barrels had been assembled together previous to importation, and in this respect that case differs from the present case. But surely it cannot be that the physical act of attaching and then detaching the stocks and barrels before exportation can change the dutiable character of the goods. Many articles made by machinery are made in separate parts and are never put together as an entirety until it becomes desirable to use them. Nevertheless they are completed articles in a commercial sense, and for all practical purposes. A breech-loading shotgun is a complete article in the sportsman's hands when he has detached the barrels for a temporary purpose. It is no less one notwithstanding the parts have never been assembled, provided they have been made so as to be attachable and detachable without requiring any adjustment. The Schoverling case does not decide that when the stocks and corresponding barrels are imported together, shipped by the same vessel for the same importer, and entered at the custom house at the same time, duty is to be assessed upon the fragmentary parts. Under such circumstances we think the parts are dutiable as a whole.

In *Isaacs* v. *Jonas* (148 U. S., 648) it was held that cigarette papers of suitable size and quality, to be used in making cigarettes, and pasteboard covers therefor of corresponding size, imported separately

and entered together, with the intention of combining them with paste into cigarette books for the use of smokers, were subject to a duty of 70 per cent ad valorem as "smokers' articles," and not to a duty of 15 per cent ad valorem as "manufactures of paper."

This principle is further sustained by *Read* v. *Certain Merchandise* (103 Fed., 197), where it was held by the Circuit Court of Appeals, Third Circuit, that printed sheets of a literary work devoted to original scientific research, not bound nor stitched together in a book, constituted a book within the meaning of the tariff law; and in *McMillan Co.* v. *United States* (116 Fed., 1018), where it appeared that the McMillan Co. had made an arrangement with the English authors and owners of the copyright of Cleland and Mackay's Anatomy that the book should be copyrighted in this country; the first 64 pages were copyrighted, and the book being about to appear in England, it was found to be impossible to set up the remainder in time to secure copyright. The first 64 pages were then printed, and the remainder of the book imported in sheets, and when received were bound with the 64 pages printed here. Judge Lacombe held that these sheets thus imported were a book.

The case of *Isaacs* v. *Jonas* (*supra*) further establishes the principle that some minor part may be lacking, or something remain to be done after importation, to complete an article, and yet it must be classified as an entirety.

Had a string and clasp been imported with the pearls here in question, though they were not strung thereon, there could be no doubt of the correctness of the collector's classification under the foregoing decisions. Can their absence make the principle inapplicable, as the evidence establishes beyond dispute that the object of the selection and graduation of the pearls was to make a necklace, and *that such pearls are regarded in the trade and sold as a necklace, irrespective of the string?*

If the absence of a string and clasp worth a few dollars precludes the classification as jewelry of a necklace worth $340,000, it will only be necessary to withhold some insignificant part of an article to take it out of the operation of the entirety principle. On the removal of buttons, clothing would cease to be wearing apparel, and valuable machinery with bolts or rivets necessary to put the parts together missing, would be dutiable according to the several constituent parts, and not as machinery.

V.

The right of an importer to so manufacture his goods as to reduce the rate of duty extends only to its manufacture, and does not permit him to change its character after manufacture in order to avoid a higher rate of duty.

Merritt v. *Welsh* (104 U. S., 694, 700, 701, 705), involved the classification of sugar. Congress had established the actual color of sugar as the test of dutiable quality, and the court held that Congress having established such test, the court was bound

thereby; and in response to the contention that the sugar was so manufactured as to reduce the classification thereon under this test, the court said:

> Great stress is laid on the charge that sugars are manufactured in dark colors on purpose to evade our duties. Suppose this is true; has not a manufacturer a right to make his goods as he pleases? If they are less marketable, who has a right to complain? If the duties are affected, there is a plain remedy. Congress can always adopt such laws and regulations as it may deem expedient for protecting the interests of the Government.

The court, however, thus stated the question involved:

> It will be perceived that the real question in the case is, whether (*supposing that sugars are not artificially colored for the purpose of avoiding duties after being manufactured*) their dutiable quality is to be decided by their actual color, graded by the Dutch standard, or by their saccharine strength as ascertained by chemical tests.

And in the dissenting opinion delivered by Mr. Justice Matthews, with whom concurred Mr. Justice Harlan, it was said:

> It seems not to be denied by the opinion of the majority of the court, as it was expressly conceded by the court below, that if an artificial color had been imparted to the sugar *after* its manufacture, by which it was made identical in appearance with the color of the sample of the Dutch standard of a particular number, below that with which it would have

> been classified but for such adulteration, the Government would have been entitled to prove the fact, and exact duties according to the classification of sugar of equal grade in its natural color.

The case is, therefore, direct authority in support of the proposition that after an article has been manufactured, it can not be altered for the purpose of avoiding duties.

Seeberger v. *Farwell* (139 U. S., 608), which has been heretofore cited, involved the paragraph which provided that women's and children's dress goods, etc., "composed in part of wool," etc., were assessable at a certain rate; and it was held that, inasmuch as Congress had provided a certain duty upon goods composed *entirely* of wool, and a higher rate upon goods composed *in part* of wool, the court was bound by that standard, and could not deviate therefrom, though the particular goods in question contained only 6 per cent of cotton, and this was used for the purpose of reducing the classification. The case of *Magone* v. *Luckemeyer* (139 U. S., 612) presented similar facts, the per cent of cotton contained in the cloth in question being only from 1.99 to 4.47, and the court made a like holding thereon.

Neither of these cases involved a change of the goods *after* manufacture, and were decided upon the explicit and unambiguous language of the statute.

The principle is further illustrated by the case of *Vantine & Co.* v. *United States* (155 Fed., 149), in which the collector had excluded goods which had been cheaply appliquéd from a tariff provision for appliquéd

articles, on the ground that that feature was added to secure a lower rate of duty than would have been assessable had they been imported plain; but the court (District Judge Platt) found that while the merchandise as imported might not have been in the highest sense ornamental, durable, permanent, and salable, it was, however, fairly so, and he therefore reversed the Board of General Appraisers; but the court further said:

> If the tinsel cord which appears on the silk were a flimsy, impracticable, useless appliance, and had been put upon the silk after manufacture *solely as a subterfuge to be stripped off after the merchandise had been safely lodged in the control of the importer*, the decision of the board would commend itself to my judgment. The evidence before the board, coupled with that taken in court, does not bring my mind to such a conclusion (p. 150).

That the court will consider the intent of an importer to defraud the revenue, and also whether or not a certain element or ingredient of the imported article is a trifling or substantial portion thereof, unless such consideration is prohibited by the language of the statute, is further shown by the cases of *Falk* v. *Robertson* (137 U. S., 225), and *Seeberger* v. *Schlesinger* (152 U. S., 581, 587).

The former case involved the application of the statute fixing duties on tobacco, as follows:

> leaf tobacco of which eighty-five per cent is of the requisite size and the necessary fineness of texture to be suitable for wrappers, and of

> which more than one hundred leaves are required to weigh a pound, if not stemmed, seventy-five cents per pound; if stemmed, one dollar per pound. All other tobacco in leaf, unmanufactured, and not stemmed, thirty-five cents per pound.

The tobacco had been imported in bales, each of which contained a quantity of Sumatra leaf tobacco answering the description in the statute of that dutiable at 75 cents per pound, except that it formed only about 83 per cent of the contents of the bale. The rest of the bale consisted of inferior leaf tobacco called "fillers," which was separated from the 75 cent tobacco by strips of paper and cloth, making the one kind readily separable from the other on the opening of the bale. It was contended by the importers that the entire bale should be taken as a unit, and when so considered should be assessed at the lower rate; but the court held that the bale should be separated into two parts and the higher grade of tobacco assessed at 75 cents per pound, and the lower grade at 35 cents.

In considering the question, the court said:

> By the method of packing, the wrapper tobacco and the filler tobacco remained entirely distinct. *The association of them in the bale was, evidently only for the purpose of avoiding the higher duty imposed upon the superior tobacco.* This association was to be dissolved the moment the bale was opened in the United States, because the two grades of tobacco sold for different prices in the market.

Seeberger v. *Schlesinger* involved the classification of certain opera glasses composed of silver or nickel-plated metal tubes, fitted to slide within each other, and held together by a metal framework or connection, the tubes containing glass lenses and inclosed in a cover of polished mother-of-pearl, which, when brought to the proper shape for such cover and polished, cost more than the metal tubes, glass lenses, and frame together when finished. The court below held that, taking the designation "shells, whole or parts of, manufactured," found in a certain schedule, in connection with the last clause of section 2499, Revised Statutes, which provided: "On all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which the component material of chief value be chargeable," these opera glasses should have been classified as manufactured shells. This court held that this was error, as the clause relating to shells was intended to apply to articles made entirely or nearly so from shells, such as combs, bracelets, etc., and not to articles of which the shell is a mere component part; and further held that the provision that "manufactures, articles, or wares not specially enumerated or provided for in this act, composed wholly or in part of * * * metal," was a more specific designation, and the opera glasses should have been assessed thereunder; but the court further said:

> We do not wish to be understood as holding that, if the metal be a mere incident or an immaterial part of the completed article, as,

> for instance, the screws or knobs upon an article of household furniture, or the buttons upon an article of clothing, such articles should be classified as manufactures in part of metal; but where, as in this case, they form a necessary and substantial part of the article, we think this clause should determine their classification (p. 587).

These authorities, taken together, establish the principle that when Congress lays down a positive rule of classification, which can admit of no exception, the courts will not take into consideration the intention of the importer to defraud the Government, or whether or not the deviation from the standard is much or little; but when on the other hand Congress leaves a certain latitude, and there be different classes to which the article may be assigned, according to the facts of the particular importation, the courts will consider whether or not the method or form in which the importation is made is a mere subterfuge, and whether the deviation or the element wanting is insignificant or is substantial.

In the present case, as heretofore shown, the statute does not declare an absolute standard, unless the pearls be set or otherwise in such condition as to unquestionably constitute an article of jewelry or, on the other hand, unless they be unquestionably in their natural state. Between these two conditions the pearls may be classified under one or the other of the clauses according to the facts proven; and, as it has been conclusively shown that the pearls in

question were selected and assembled for a necklace, and actually constituted a necklace abroad, and were imported for redelivery to the purchaser as the identical necklace worn abroad by her, the fact that they were taken apart and imported in separate packages, the obvious purpose being to defraud the Government of its revenue, can not prevent their being classified under paragraph 434 as being articles most or equally resembling jewelry or pearls strung.

This similitude is intensified by the fact that the pearls were packed by sizes as taken off the string and not mixed indiscriminately, which shows that in the condition in which they were imported they were a necklace and not loose pearls intended for the stock of a jeweler.

VI.

The pearls in question were jewelry or parts thereof, finished or unfinished, and therefore were properly classified under paragraph 434.

As imported, the pearls were unquestionably part of a particular necklace, and were imported for redelivery to Mrs. Leeds as the pearls constituting the necklace worn abroad by her and purchased under an executory contract. No matter whether or not suitable for the purpose, they could not be diverted by the importer to any other use nor to anybody else than the purchaser without breach of contract. The intention is plainly shown by the facts, and is made material by the decision of this court in *Isaacs* v. *Jonas* (*supra*), wherein, in referring

to the cigarette papers and covers there in question, it was said:

> And his intention at the time of importing them, as well as his motive in importing them in the form that he did, was to combine them into cigarette books for the use of smokers (p. 653).

For the foregoing reasons the judgment of the Circuit Court of Appeals should be reversed.

J. A. FOWLER,
Assistant to the Attorney General.

SEPTEMBER, 1911.

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Supreme Court of the United States,

OCTOBER TERM, ~~1910~~ 1911.

UNITED STATES, Petitioner, vs. BERNARD CITROEN.	No. 30.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Brief for Appellee.

The statement of the case, as made in the Assistant Attorney-General's brief, is quite correct as far as it goes; but we think any statement of the case would be incomplete that did not include some further facts which are not mentioned or referred to in the Government brief. They are so tersely stated in the decision of the Circuit Court of Appeals that we quote them from that opinion with references to the testimony upon which it is based:

> "About a week after the payment of the duty of 10 per centum the Collector on instructions from the Secretary of the Treasury, demanded an additional duty of 50 per centum amounting to $110,335. The appellant went to Washington, protested against this additional exaction and finally asked that the sum already paid be refunded and he be permitted to take the pearls back to France. The request was denied. The additional duty was paid under protest and

the pearls, in the papers as imported, were delivered to Mrs. Leeds.

In this connection we deem it proper to refer to a ruling of the Treasury Department which was in force in June, 1906, and which it is fair to assume actuated the appellant in importing and selling the pearls in question. In January, 1905, the Board, upon facts almost identical with those at bar, decided in the Rushmore case that 85 pearls 'carefully selected, matched and assorted, and, in fact, are said to have been strung and required only to be restrung in order to form a necklace,' were dutiable at 10 per centum ad valorem under Paragraph 436. No appeal was taken from this decision, which went into effect February 21, 1905. The Treasury Department sent copies of the decision to officers of the customs for their information and guidance. The interpretation thus placed upon the law by the officers of the Government and under which they acted for over fifteen months is entitled to consideration. They had evidently determined that the vexed questions arising under the ambiguous language of the pearl paragraphs should be settled and that this could be accomplished and a fair and reasonable rule established by acquiescence in the Rushmore decision."

The decision and promulgation referred to were as follows:

UNITED STATES GENERAL APPRAISERS,

NEW YORK, January 21, 1905.

In the matter of protest 4040 h of Charles E. Rushmore against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (Lunt, Sharretts and McClelland, General Appraisers; McClelland, G. A., absent).

SHARRETTS, General Appraiser: This protest covers 85 pearls, which the appraiser in

a special report states "have been carefully selected, matched and assorted *and, in fact, are said to have been strung and require only to be restrung in order to form a necklace.* They are in the same condition as those passed upon by the Board in G. A. 5146 (T. D. 23,748)." Based upon this report, we hold that said merchandise is dutiable at 10 per cent. ad valorem under paragraph 436, act of July 24, 1897. In G. A., 5146 (T. D. 23,748) the Board reached a different conclusion, and was affirmed by the Circuit Court for the Southern District of New York in suit 3328. Upon review by the Circuit Court of Appeals, however, the lower court was reversed and the pearls were held to be dutiable by similitude at 10 per cent. ad valorem under paragraph 436. See T. D. 25,876.

On the authority of this decision, we sustain the claim in the protest that said merchandise is dutiable at 10 per cent. ad valorem under paragraph 436.

The Collector's decision is reversed."

This decision was printed in the synopsis of Treasury Decisions, promulgated in Volume 9, No. 4 of Treasury Decisions, preceded by a circular, of which the following is a copy:

"TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C.,
January 25, 1905.

TO OFFICERS OF THE CUSTOMS, INTERNAL REVENUE, AND OTHERS:

The following decisions of the Department (including those under sections 13 and 14, act of June 10, 1890, made by the Board of United States General Appraisers at the port of New York) rendered to date, upon the construction to be given to the various acts of Congress relating to the tariff, administration of the customs, internal revenue, etc., are *published for the information*

and guidance of officers of the customs, internal revenue, and others concerned.

The decisions of the Board of General Appraisers sustaining protests will take effect at the expiration of thirty days from the date thereof, unless in the meantime appeal has been taken under the provisions of Section 15 of the Act of June 10, 1890, on behalf of the United States, in which case the proper officers will be duly advised. Action under the decisions from which appeals have been so taken will be suspended until the questions involved therein shall have been judicially determined (see circular of November 15, 1890, T. D. 10,369).

Decisions for publication rendered by the Department and the Board of General Appraisers are issued each Thursday.

LESLIE M. SHAW,
Secretary of the Treasury."

"In the case at bar the Board after full hearing, during which they listened to the testimony of a large number of expert witnesses, decided in favor of the importer and sustained the protest. They found the following facts:

FIRST.—That a sufficient number of pearls, even of large size, required to form a necklace, matched as to size and comparative color, but not otherwise, can be assembled, even in a short time at a price based upon the cost of each separate pearl.

SECOND.—Such a collection would usually be sold at a less price than the aggregate amount if each pearl were sold separately.

THIRD.—The pearls in question belong to such a collection, *not being matched as to color and luster with such care as would enhance their value as a collection.*

FOURTH.—Loose pearls bear no marks by means of which it can be determined whether they have been strung or set as jew-

elry, and it is not unusual for the owner of a necklace to remove a pearl and replace it by one more desirable, the discarded pearl taking its place in trade as an unstrung pearl.

FIFTH.—Over 75 per cent. of all large pearls are drilled by the pearl fishers.

The Board reached the conclusion that the pearls in question having been imported loose in separate papers were presumptively dutiable as pearls in their natural state by similitude at 10 per centum ad valorem. After the decision of the Board Mrs. Leeds was examined in the Circuit Court and testified regarding the pearls that during the negotiations in Paris 'they were brought (to the hotel) both on the string and off the string; it was strung up at odd times, then it was taken apart and other pearls were put in and others taken out; so it was strung, several times * * * I wore it—I don't know any particular occasion. I wore it a great deal.

It happened that Mrs. Leeds wanted the pearls as a necklace, or a part of a necklace, and naturally she wore them tentatively in Paris.

Another purchaser might have wanted the pearls for a very different purpose, and would have probably assembled them, or parts of them, in the proposed environment. The fact remains that the pearls arrived here unstrung *and presumably too few in number for a necklace, for Mrs. Leeds on receiving them, added six pearls to the collection to make the necklace long enough,* and had them placed on a silk cord with a suitable clasp. Then, and not till then, was the necklace complete" (Rec., pp. 182, 183, 184).

BRIEF AND ARGUMENT.

For convenience we shall submit our points in the same order as those in the Government brief, so far as they go.

I.

The Circuit Court of Appeals did not pursue any improper method with regard to the findings of the Board of General Appraisers.

The rule is now too well settled to admit of dispute that the findings of the Board of General Appraisers should always be adopted by tribunals of review except where they are without evidence to support them, where they are against the weight of the evidence, or where they have been overborne by new testimony taken in the Circuit Court.

It is not claimed in this case that the Board did not have abundant evidence to sustain every finding that they made. Nor, so far as we know, is it contended that their findings are against the weight of the evidence. The evidence was, as regards some points, conflicting, and it is peculiarly as to such cases that the findings of the Board should be accepted, as they saw the witnesses and had an opportunity to judge of their credibility. See the following cases:

Gabriel & Schall *v.* United States, 123 Fed. Rep., 296.

White *v.* United States, 72 Fed. Rep., 251.

In re Van Blankensteyn, 56 Fed. Rep., 474.

In re Kursheedt Mfg. Co., 49 Fed. Rep., 633.
In re White, 53 Fed. Rep., 787.
Marine *v.* Lyon, 65 Fed. Rep., 992.
In re Bing, 66 Fed. Rep., 727.
Mexican Onyx & Trading Co. *v.* United States, 66 Fed. Rep., 732.
Belcher *v.* United States, 91 Fed. Rep., 975.
Myers *v.* United States, 110 Fed. Rep., 940.
Leerburger *v.* United States, 113 Fed. Rep., 976.
United States *v.* Jackson, 113 Fed. Rep., 1000.
United States *v.* Riebe, 1 U. S. Court of Customs Appeals, 19.

With regard to the new evidence taken in the Circuit Court, it consisted of the testimony of two witnesses. One of these, Bagg, did not in any way contradict the testimony taken before the Board, and if he had, one witness's testimony could not be allowed to upset a finding of the Board made on the testimony of a number of witnesses.

Page *v.* U. S., 113 Fed. Rep., 1006.
Bromley *v.* U. S., 154 Fed. Rep., 399.

The only other evidence was the testimony of Mrs. Leeds as to the circumstances under which she bought and wore the pearls. This did not contradict any testimony before the Board. Nor was it in any way disregarded by the Circuit Court of Appeals, but is referred to in their opinion (fol. 331, p. 184), in which they say:

> "It happened that Mrs. Leeds wanted the pearls as a necklace, or as part of a necklace, and naturally she wore them tentatively in Paris.

> Another purchaser might have wanted the pearls for a very different purpose and would probably have assembled them, or parts of them, in the proposed environment. The fact remains that the pearls arrived here unstrung and presumably too few in number for a necklace, for Mrs. Leeds on receiving them added six pearls to the collection to make the necklace long enough, and had them placed on a silk cord with a suitable clasp. Then, and not till then, was the necklace complete."

There is nothing in this evidence to justify the assertion made on page 7 of the Government brief that the pearls "were a necklace" and "were delivered to her as a necklace" at Newport.

II.

If the decision of the Circuit Court of Appeals conflicts with other decisions in pearl cases, that constitutes no reason for its reversal.

All the decisions referred to were made in the Second Circuit and, with the exception of the Tiffany case, 103 Fed. Rep. 619, which was made in the Circuit Court by Judge Lacombe, the decisions were all made by the Circuit Court of Appeals for the Second Circuit, and we know of no law or rule that deprives any court of the power of modifying in a later decision its views as expressed in earlier ones. But even this question is not necessary to be here considered. For the Court of Appeals, while intimating that the earlier decisions might be wrong, and that the true view

might be that drilled pearls, unless imported strung or set, were dutiable as pearls in their natural state, went on to say:

> "We feel constrained, however, to follow the former decisions of this court in the Tiffany and Neresheimer cases"

and proceeded to show that, within the decisions in those cases, the Government was not entitled to more than 10 per cent. duty upon the pearls.

III.

As to the so-called finding of fact by Judge Lacombe.

The only words in the opinion of Judge Lacombe that could possibly be designated by such an expression as Findings of Fact are these: "The brief additional testimony introduced in the Circuit Court conclusively establishes the proposition" (that these 37 pearls had been assembled into a complete necklace abroad and worn as such). We have so repeatedly referred to the testimony in this regard that we do not consider it necessary to refer to it again. Judge Lacombe makes some further suggestions about the question whether sorting and matching pearls makes the value of the collection greater than that of the individual pearls composing the collection. He does not discuss the evidence in this case on that subject, nor the finding of the Board which, being based on abundant evidence, partially conflicting, he had no right to disregard, and which was as follows (Rec., pp. 151-152):

> "Pearls of greater dimensions than the average are comparatively rare; hence it

frequently requires several years' search in order to secure a sufficient number to form a necklace, all accurately matched in the essential features of size, color and luster. Such a collection thus assembled would, no doubt, command a higher price than the aggregate value of the separate pearls. On the other hand, a sufficient number of pearls, although of large size, required to form a necklace, matched as to size, but not otherwise, except a mere regard for comparative color, could be assembled within a short time and at a price based upon the cost of each separate pearl. In order to dispose of thirty or more pearls to one purchaser, such a collection would usually be sold at a less price than the aggregate would amount to were each pearl sold separately. The evidence shows and we find that the pearls in question belong to the latter and not to the first class."

That there was ample testimony to support this finding see the following passages from the testimony:

Nissen, p. 86, fol. 151; p. 91, fol. 161.
Dreicer, p. 105, fol. 185; p. 103, fol. 182; p. 112, fol. 197.
Smith, p. 69, fol. 122.
Kauffmann, p. 59, fol. 105.
Citroen, p. 14, fol. 26.

IV.

The Government's argument as to an article separated into its component parts (which parts are imported separately), as well as the authorities cited thereunder, are wholly irrelevant to the point involved in this controversy.

In the first place, we are not dealing here with an article separated into its component parts, which parts are imported separately. What was imported here was 37 pearls. No necklace string and no clasp were imported and, as all the evidence shows, the 37 pearls, if strung, would not make a string long enough for a necklace. (See testimony of the following witnesses):

Citroen, p. 12, fol. 22; p. 27, fol 49; p. 54, fol. 97; p. 55, fol. 98.
Dreicer, p. 113, fol. 199.
Eisenman, p. 128, fol. 227.
Mrs. Leeds, p. 172, fol. 310.

When Mrs. Leeds put them into her necklace she added six more pearls (Rec., fol. 310). There was no importation of parts at all. There was an importation of pearls.

In the case of United States *vs.* Irwin, 78 Fed. Rep., 799, it was shown that "many entries comprised gun-barrels and gun-stocks coincident in number, shipped for the importer on the same steamer under separate invoices, the barrels being in cases by themselves and the stocks in cases by themselves invoiced as gun-stocks. In some of the entries the barrels and stocks were marked with identifying numbers, so that the appropriate bar-

rels could be selected for the appropriate stocks, respectively, and the two parts united into a complete gun merely by inserting the barrels in the stocks. There were other entries in which the barrels and stocks were shipped in separate cases and invoiced separately, but not coincident in number, there being in some entries more barrels than stocks, and in others more stocks than barrels." This case was never reviewed here.

In the case of Isaacs *vs.* Jonas, 148 U. S., 648, it is expressly recited in Judge Gray's opinion:

> "The leaves of paper were fit for nothing else but to be made into cigarettes and smoked with the tobacco wrapped in them; and they were used in the same way whether never put into a cover at all, or first pasted into a cover and then torn out one by one. The covers were fit for nothing except to hold and protect the papers until made by the smoker into cigarettes."

The provision under which these articles were held dutiable was one for pipes, pipe bowls and other smokers' articles. The Court pointed out that the use of the word "pipe bowls" (which, of course, could not be used by smokers without a stem) indicated that articles to come under this provision did not need to be completed. All that was necessary was that they should be adapted and designed for no other use than that of smokers.

Now in the case at bar, there is abundant evidence that drilled pearls were commonly used for many other uses than to make necklaces. See testimony of the following witnesses:

Nissen, p. 86, fol. 152.
Dreicer, p. 105, fol. 186.
Smith, p. 69, fol. 121.
Citroen, p. 15, fol. 27.
Kauffmann, p. 60, fol. 106.

No string and clasp were imported at all.

Equally meaningless are the citations of the "book" cases reported in 103 Federal Reporter, 197, and 116 Federal Reporter, 1018. The Court in these cases was giving a liberal construction to a provision for books, and the paragraph of the statute provided for books, bound or unbound. Here we are dealing with an enormous additional tax imposed by the Government under a statute which provides a duty of 60% for pearls strung, and a duty of 10 per cent. for pearls unstrung. It is difficult to see any parallel.

The Assistant Attorney-General is very much exercised over the insignificance of the difference between pearls on a string and pearls off a string, but the trouble is the statute recognizes the difference and, therefore, the Courts may not ignore it. The same would be true of the provision for pearls set and pearls not set. If a man purchased a very beautiful and valuable pear-shaped pearl to be put into a scarf-pin, and without having it set imported it into this country, could it be held that it was dutiable as a pearl set because it was intended to set it, notwithstanding that, as imported, it was not set? If such a pearl were set in a pin, would the fact that the pin was of trifling and almost insignificant value, compared with that of the pearl, prevent it from being dutiable as a pearl set and thus paying 60 per cent. instead of 10 per cent.?

V.

The contention of the Government, that an importer has no right to change the character of goods after manufacture in order to avoid a higher rate of duty, is not only irrelevant, but unsound.

Every importer has a right to have his goods assessed for duty at the appropriate rate as and what they are when they come into the port and before the Customs officers. See the following authorities:

Seeberger *v.* Farwell, 139 U. S., 608.
Worthington *v.* Robbins, 139 U. S., 337.
Merritt *v.* Welsh, 104 U. S., 694.
United States *v.* Wotton, 53 Fed. Rep., 344.
Johnson *v.* United States, 123 Fed. Rep., 997.
Godwin *v.* United States, 66 Fed. Rep., 739.
Paturel *v.* Robertson, 41 Fed. Rep., 329.
Hunter *v.* United States, 143 Fed. Rep., 914.
Stone & Downer *v.* United States, 147 Fed. Rep., 603, 605.
Mautner *v.* United States, 84 Fed. Rep., 155.
In re Blumenthal, 51 Fed. Rep., 76.
United States *v.* Levitt, 26 Fed. Cas., 919.
In re Schoverling, 45 Fed. Rep., 349; affd. in United States *v.* Schoverling, 146 U. S., 76.

Thus in Worthington *v.* Robbins, 139 U. S., 337, it was decided that white hard enamel, though imported for use in making watch dials, and in fact so used, was not dutiable as watch materials.

The Court used the following language:

> "It is apparent, from the facts stated, that *the customs officers could not determine from an examination of the article* to which of the uses named it was to be applied, or that it was to become the material of a watch. In order to produce uniformity in the impostition of duties, the dutiable classification of articles imported must be ascertained *by an examination of the imported article itself, in the condition in which it is imported.*"

In the case at bar the testimony abundantly shows, and the Board of Appraisers have found, that loose pearls bear no marks by which it could be determined if they had ever been strung or set as jewelry (fol. 813), and it is quite apparent that if they do not bear marks by which it can be shown that they have ever been used for stringing, it is certain that they have no marks by which it can be determined whether they will be strung after importation.

In re Blumenthal *et al.*, 51 Fed. Rep., 76 (a decision afterwards affirmed by the Circuit Court of Appeals), Judge Lacombe decided that disks of pearl not shanked or pierced could not be held dutiable as buttons, and used the following language:

> "Now, although they may stop short of being complete buttons by a very small measure, that circumstance is immaterial; and *it is also wholly immaterial with what intent the process of their manufacture was stopped at that point.* Much testimony seems to have been taken before the Board of Appraisers going to show that the articles were imported in this unfinished condition,

> in order that they might escape the tariff rate laid upon pearl buttons, and pay the lower rate imposed on manufacture of pearl or shell. In Seeberger *v.* Farwell, 139 U. S., 608; 11 Sup. Ct. Rep., 650, it was held that *the question as to the intent of the importer* was wholly immaterial, so long as Congress provided that goods in a particular condition should pay a lower rate of duty than goods in another. It was and is the right of the importer, if he so chooses, to *put his goods into such a condition for importation here* as will enable him to get them in at the lower rate."

If a man purchased an exceedingly valuable precious stone set in a ring, could it be seriously contended that he had no right to take the stone out of the ring and import it separately whether or not he brought the ring mounting along. If it be the law that he must bring the ring and pay 60% on it instead of bringing in the stone and paying 10 per cent. on it, where is the law? If a man purchased abroad an article composed of a cheap foundation garment to which was attached a beautiful piece of gold embroidery where is the law that forbids him to tear the embroidery off the garment and import it as gold embroidery and pay duty on it as such. Upon what theory is it contended that, for the purpose of determining the classification of any article as it comes before the customs officers, an inquiry may be made as to its past history or its contemplated future use. There are, indeed, some provisions in the tariff which make the use of an article the criterion as to the rate of duty upon it. Thus, certain articles are exempted from duty altogether, if they are designed for presentation to a college or institution of learning. Many articles are made dutiable or free according to their fitness for certain uses. Thus, old rags and gunny bagging, etc., are free if they are fit only to be con-

verted into paper. But, in the absence of any such provision in the Paragraph of the Tariff, why should collectors or officers of the customs assume it to be implied. The impracticability of any such theory is referred to by the Circuit Court of Appeals in their opinion where they say:

> "We think the confusion is, in a measure, due to the effort to solve the difficulty by attempting to institute a comparison between the imported articles and combinations not named in the tariff law, depending not upon an examination of the articles themselves, but often upon extrinsic evidence obtained long afterwards. A comparison which can not be uniform, which imposes 10 per cent. upon one aggregation of pearls and 60 per cent. upon a similar aggregation, the rate depending upon the ability to obtain evidence of prior use in foreign countries; a comparison which does not admit of a fixed, definite rule, which encourages partiality, promotes injustice, and has broken down in practical application."

Can it be seriously contended that if A brings in a collection of pearls which at one time were strung and used as a necklace abroad and B brings in an identical collection which was never so used, that the duty on one collection is 10 per cent. and on the other 60 per cent. Or, assuming the same fact as to the identity of the collections, can the fact that A intends to have his collection made into a necklace by putting them on a string and fastening them with a clasp, while B intends his for other uses, cause the same difference in the rate of duty. How far back is the Government to search into the history of a collection of pearls or how far forward is it to consider the intention of the parties into whose hands the pearls may come. Suppose Mrs. Leeds, on receiving the pearls, had changed her mind about making a necklace and had sold the pearls in separate lots to dealers,

would they still have been dutiable at 60 per cent.? Or, suppose a dealer had imported them without any particular intent as to what he should do with them, and some time after receipt of them had sold them to a party who put them into a necklace, would they be dutiable at 10 per cent. to the dealer and would the Collector reliquidate the entry and charge 60 per cent. if they were put into a necklace within a year? The Government's theory will not conform with any test of law or common sense. The suggestions in Merrit *v.* Welsh, 104 U. S., 694, are *dicta* merely. The same is true of the suggestion in Vantine *vs.* United States, 155 Fed. Rep., 149. The case of Falk *vs.* Robertson, 137 U. S., 225, is no authority for the Government's position. There were there two kinds of tobacco in a bale, each kind being separated from the other by strips of paper and cloth. Each kind was fully covered by a separate provision therefor in the tariff, and the Court held that each kind must pay the duty provided for it. The importers had attempted to claim that the bale was the unit which should be considered in determining the dutiability of the tobacco, and the Court refused to accept that view. If Citroen had had in his box of pearls a silk string and a clasp, under the Falk decision the Courts would not even then have assessed all the articles as an entirety, but would have taken the appropriate duty on the pearls, the appropriate duty on the clasp and the appropriate duty on the silk string, unless the last named had been considered too insignificant to make it worth while to assess duty upon it.

The case of Seeberger *v.* Schlesinger, 152, U. S., 581, has no bearing on this case. The articles in question were opera glasses composed of glass lenses, metal frameworks and pearl ornamentation, pearl being the chief value. The tariff provided for shells, whole or parts of, manufactured, but did

not contain any provision for manufactures in chief value of shell. It also contained a provision for articles composed wholly or in part of metal, and the Court held that this latter provision containing the words "wholly or in part" was the most specific provision for the opera glasses and that the clause relating to shells was intended to apply to articles made entirely, or nearly so, from shells. In our case, the only article imported was pearls. They were not made up into anything and there was no other article with them. The case is, therefore, entirely inapplicable.

The suggestion is made by the Government under this point that the obvious purpose of importing these goods in the manner in which they were imported was to defraud the Government of its revenue. This suggestion is most unreasonable and unjust, in view of the facts already pointed out, that when a precisely similar importation was made by Rushmore the Board of Appraisers had decided that they were dutiable at 10 per cent. and the Government had acquiesced in the decision and promulgated it for the guidance not only of customs officers, but of OTHERS CONCERNED.

The pearls were imported in the form and manner in which they were usually imported by dealers, but, in the case of Neresheimer, the pearls had been imported in a grooved box arranged as to sizes, with the largest pearl in the center and the others graduated down in size as they would be arranged on a string if they were to be used as a necklace and the Court of Appeals decided that that fact did not make them dutiable at more than 10 per cent.

POINT VI.

The pearls could certainly not be held dutiable as jewelry or parts thereof and assessed accordingly under Paragraph 434 at 60 per cent.

We can scarcely conceive that the point that these pearls were dutiable as jewelry or parts thereof will be seriously urged. Paragraph 434 provided for articles commonly known as jewelry and parts thereof finished or unfinished, including *pearls set or strung.* Paragraph 436 provided for pearls in their natural state, *not strung or set.* Congress could hardly have gone further to show its intent that only pearls strung or set should be dutiable under Paragraph 434, and how it can be seriously contended that they are dutiable under that Paragraph when they are not strung or set, it is difficult to understand.

POINT VII.

The injustice of the Government's claim.

The Government is seeking to enforce against this importer a rule which has been applied to no other. The dealers who testified in this case both for and against the Government testified that they had never paid a duty of 60 per cent. on drilled pearls.

See

Eisenman, p. 130, fol. 132.
Frankel, p. 143, fols. 255-258.
Bagg, p. 170, fol. 307.

The testimony of the Government Examiner was substantially to the same effect.

Treadwell, p. 150, fol. 268.

The Government sought to apply a similar rule to Tiffany & Company on a collection of pearls bought for a necklace by one Guggenheim, and the case was decided against it by the Board of General Appraisers (T. D. 29542), the United States Circuit Court (172 Fed. Rep., 300), and the Circuit Court of Appeals (178 Fed. Rep., 1006), and this Court on application refused to issue a writ of certiorari. United States *vs.* Tiffany, 218 U. S., 675.

In the application for the writ in the case last cited, the Attorney-General stated in his petition that the case involved precisely the same question with respect to another lot of unstrung pearls as that involved in the case at bar.

So that, if the Government should succeed in this case, Citroen would be the only person who would pay 60 per cent. duty on a collection of pearls.

The views of Congress with reference to this question may be inferred from the fact that after the litigation in this case when they came to frame the Tariff Act of 1909 they provided in Paragraph 449 the following:

> "Pearls and parts thereof, drilled or undrilled, but not set or strung, 10 per centum ad valorem."

POINT VIII.

Effect upon business of applying the test contended for by the Government to the determination of the rate of duty on merchandise.

In conclusion, we have only to say that this case is an excellent illustration of the difficulties and complications which will beset the collection of the revenues if the old safe rule is departed from of determining the dutiable character of merchandise by an inspection of it on its arrival in this country. We have here an enormous record composed of impression, opinions and speculations of experts as to what might have been done with this merchandise before it was imported and for what use it might be designed after importation. If the provisions of the tariff are to be construed in this way, no man who imports merchandise can safely sell it within a year after its arrival, for he will never know what suggestions as to its past history or future use may be the pretext for a reliquidation of an entry and the exaction of duty, which would involve enormous financial loss, and possibly bankruptcy.

POINT IX.

In all cases of doubt as to the meaning of a revenue statute, the decision should be in favor of the importer who has to pay the tax, and there never was a case more strongly calling for the application of that rule than the case at bar.

U. S. *v.* Wigglesworth, 2 Story, 369.
Rice *v.* U. S., 53 F. R., 910.
Hartranft *v.* Wiegman, 121 U. S., 609.
Mathewson *v.* U. S., 71 F. R., 394.
U. S. *v.* Adams, 54 F. R., 147.
Adams *v.* Bancroft, 3 Summer, 384.
McCoy *v.* Hedden, 38 F. R., 89.
American Net & Twine Co. *v.* Worthington, 141 U. S., 468.
Hempstead *v.* Thomas, 122 F. R., 538.
Hayes *v.* U. S., 150 F. R., 63, 66.
U. S. *v.* Merck, 91 F. R., 639.
Franklin Sugar Refining Co. *v.* U. S., 142 F. R., 376, 382.
Powers *v.* Barney, 5 Blatch., 202; 19 Fed. Cas., 1234.
U. S. *v.* Davis, 54 Fed. Rep., 147.
U. S. *v.* Michelin Tire Co., 1 Court Customs Appeals, 518.
U. S. *v.* Hatters' Fur Exchange, 1 Court Customs Appeals, 198.
U. S. *v.* Matagrin, 1 Court Customs Appeals, 309, 312.
Woolworth *v.* United States, 1 Court Customs Appeals, 120, 122.

POINT X.

The decision of the Circuit Court of Appeals should be affirmed.

Washington, Oct. 28, 1911.

W. WICKHAM SMITH,
JOHN K. MAXWELL,
Attorneys for Appellee.

W. WICKHAM SMITH,
Of Counsel.

UNITED STATES *v.* CITROEN.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 30. Argued November 1, 1911.—Decided February 19, 1912.

In order to produce uniformity in the imposition of duties, the dutiable classification of articles imported must be ascertained by an examination of the imported article itself in the condition in which it is imported.

A prescribed rate of duty cannot be escaped by disguise or artifice; but if the article imported is not the article described as dutiable at a specified rate, it does not become dutiable under the description because it has been manufactured for the purpose of being imported at a lower rate.

The court is not concerned with reasons for a distinction in the tariff act,—it is enough that Congress made it.

Pearls, unset and unstrung, are dutiable under par. 436 of the tariff act of 1897 at ten per centum and not under par. 434 at sixty per centum, because capable of, or intended for, being strung as a necklace.

The fact that a pearl has been drilled—as is the case with more than seventy-five per cent. of all large pearls when they come from the wholesale dealers—does not take it out of par. 436 and make it dutiable under par. 434 at sixty per centum.

Congress will not be presumed in framing a tariff act to have contemplated a radical departure from the policy of former tariff legislation when it will also be necessary to presume that Congress in doing so also disregarded facts of the trade.

After reviewing provisions of former tariff acts and prior decisions in regard to pearls and the duties to be levied upon them, *held*, that pearls, not strung or set, although suitable for being strung as a necklace are not to be classed by similitude under par. 434 and subjected to the higher duty of sixty per centum.

Where a tariff act, as that of 1897, provides for pearls set or strung, and for pearls not strung or set, it will not be presumed that Congress intended to leave an unenumerated class of pearls to be classed by similitude.

166 Fed. Rep. 693, 92 C. C. A. 365, affirmed.

THE facts, which involve the construction of paragraphs 434 and 436 of the tariff act of 1897 as applied to pearls, are stated in the opinion.

Mr. Assistant to the Attorney General Fowler for the United States:

The Circuit Court of Appeals improperly adopted as the facts the findings of the Board of General Appraisers. *Apgar* v. *United States*, 78 Fed. Rep. 332, 334.

The new evidence introduced in the Circuit Court was, in substance, that the pearls were assembled into a complete necklace and were a necklace, and were so worn by the purchaser, before importation.

Had this evidence been before the board, the board would, according to its own declaration, have overruled the protest and affirmed the collector's classification.

The decision of the Circuit Court of Appeals conflicts with the well-recognized rule laid down in other cases for the assessment of duties upon pearls. *Tiffany* v. *United States*, 103 Fed. Rep. 619.

A perforated pearl is not in its natural state, although the cost of perforation is but trifling. The amount of expense cannot be considered in determining whether the pearl has been changed from its natural state. *Seeberger* v. *Farwell*, 139 U. S. 608; *Tiffany* v. *United States*, 105 Fed. Rep. 766; *Tiffany* v. *United States*, 112 Fed. Rep. 672; *Neresheimer* v. *United States*, 131 Fed. Rep. 977.

In the various cases relating to the assessment of duties upon drilled pearls, three theories have been advanced: First. The one adopted by Judge Coxe, in the second *Tiffany Case*, 105 Fed. Rep. 766, holding them assessable as strung pearls under the similitude clause; second, the rule adopted by the Circuit Court of Appeals in the same *Tiffany Case* and approved in the *Neresheimer Case*, *supra*, and applied in the present case, that such pearls must be classified under the similitude clause as belonging to either par. 434 or 436; and third, the method suggested, but not followed, by the Circuit Court of Appeals in the present case, that pars. 434 and 436 embrace all kinds of pearls, and the similitude clause has no application.

That this last method is not the correct one, is clearly shown by Judge Lacombe in the first *Tiffany Case*. See provisions relating to pearls in the previous tariff acts. Paragraphs 452 and 453 of the act of October 1, 1890 (26 Stat. 600); pars. 337 and 338 of the act of August 28, 1894, c. 349, 28 Stat. 534.

The finding of fact by Judge Lacombe is not only abundantly sustained by the evidence, but when the evidence is taken as a whole no other inference can be drawn therefrom.

Years were spent in the collection of these pearls. They were assorted and selected as to size, quality, etc., and kept intact for years, and became well known in the trade as a collection for a valuable necklace.

When an article is separated into its component parts, which parts are imported separately, they are assessable

for duty as if the article were imported as a whole. *United States* v. *Schoverling*, 146 U. S. 76; *United States* v. *Irwin*, 78 Fed. Rep. 799; *Isaacs* v. *Jonas*, 148 U. S. 648; *Read* v. *Certain Merchandise*, 103 Fed. Rep. 197; *McMillan Co.* v. *United States*, 116 Fed. Rep. 1018.

The right of an importer to so manufacture his goods as to reduce the rate of duty extends only to its manufacture, and does not permit him to change its character after manufacture in order to avoid a higher rate of duty. *Merritt* v. *Welsh*, 104 U. S. 694, 700; *Seeberger* v. *Farwell*, 139 U. S. 608; *Vantine & Co.* v. *United States*, 155 Fed. Rep. 149.

The court will consider the intent of an importer to defraud the revenue, and also whether or not a certain element or ingredient of the imported article is a trifling or substantial portion thereof, unless such consideration is prohibited by the language of the statute. *Falk* v. *Robertson*, 137 U. S. 225; *Seeberger* v. *Schlesinger*, 152 U. S. 581, 587.

The pearls in question were jewelry or parts thereof, finished or unfinished, and therefore were properly classified under par. 434.

Mr. W. Wickham Smith, with whom *Mr. John K. Maxwell* was on the brief, for respondent:

The Circuit Court of Appeals did not pursue any improper method with regard to the findings of the Board of General Appraisers.

The findings of the board should always be adopted by tribunals of review except where they are without evidence to support them, where they are against the weight of evidence, or where they have been overborne by new testimony taken in the Circuit Court. *Gabriel & Schall* v. *United States*, 123 Fed. Rep. 296; *White* v. *United States*, 72 Fed. Rep. 251; *In re Van Blankensteyn*, 56 Fed. Rep. 474; *In re Kursheedt Mfg. Co.*, 49 Fed Rep. 633; *In re White*,

53 Fed. Rep. 787; *Marine* v. *Lyon*, 65 Fed. Rep. 992; *In re Bing*, 66 Fed. Rep. 727; *Mexican Onyx Co.* v. *United States*, 66 Fed. Rep. 732; *Belcher* v. *United States*, 91 Fed. Rep. 975; *Myers* v. *United States*, 110 Fed Rep. 940; *Leerburger* v. *United States*, 113 Fed. Rep. 976; *United States* v. *Jackson*, 113 Fed. Rep. 1000; *United States* v. *Riebe*, 1 Customs App. 19.

As to the new evidence taken in the Circuit Court, one of the witnesses did not contradict the testimony taken before the board, and if he had, one witness's testimony could not be allowed to upset a finding of the board made on the testimony of a number of witnesses. *Page* v. *United States*, 113 Fed. Rep. 1006; *Bromley* v. *United States*, 154 Fed. Rep. 399.

There is nothing in the evidence of the purchaser to justify the assertion made by the Government that the pearls "were a necklace" and "were delivered to her as a necklace" at Newport.

If the decision of the Circuit Court of Appeals conflicts with other decisions in pearl cases, that constitutes no reason for its reversal.

As to the so-called finding of facts by Judge Lacombe, there was ample testimony to support it.

The Government's argument as to an article separated into its component parts (which parts are imported separately), as well as the authorities cited thereunder, are wholly irrelevant to the point involved in this controversy. *United States* v. *Irwin*, 78 Fed. Rep. 799; *Isaacs* v. *Jonas*, 148 U. S. 648, do not apply to this case.

The contention of the Government, that an importer has no right to change the character of goods after manufacture in order to avoid a higher rate of duty, is not only irrelevant, but unsound.

Every importer has a right to have his goods assessed for duty at the appropriate rate as and what they are

when they come into the port and before the customs officers. *Seeberger* v. *Farwell*, 139 U. S. 608; *Worthington* v. *Robbins*, 139 U. S. 337; *Merritt* v. *Welsh*, 104 U. S. 694; *United States* v. *Wotton*, 53 Fed. Rep. 344; *Johnson* v. *United States*, 123 Fed. Rep. 997; *Godwin* v. *United States*, 66 Fed. Rep. 739; *Paturel* v. *Robertson*, 41 Fed. Rep. 329; *Hunter* v. *United States*, 143 Fed. Rep. 914; *Stone & Downer* v. *United States*, 147 Fed. Rep. 603, 605; *Mautner* v. *United States*, 84 Fed. Rep. 155; *In re Blumenthal*, 51 Fed. Rep. 76; *United States* v. *Levitt*, 26 Fed. Cas. 919; *In re Schoverling*, 45 Fed. Rep. 349; aff'd in *United States* v. *Schoverling*, 146 U. S. 76.

The pearls could certainly not be held dutiable as jewelry or parts thereof and assessed accordingly under par. 434 at 60 per cent.

The Government's claim is an unjust one.

In all cases of doubt as to the meaning of a revenue statute, the decision should be in favor of the importer who has to pay the tax, and there never was a case more strongly calling for the application of that rule than the case at bar. *United States* v. *Wigglesworth*, 2 Story, 369; *Rice* v. *United States*, 53 Fed. Rep. 910; *Hartranft* v. *Wiegman*, 121 U. S. 609; *Mathewson* v. *United States*, 71 Fed. Rep. 394; *United States* v. *Adams*, 54 Fed. Rep. 147; *Adams* v. *Bancroft*, 3 Sumner, 384; *McCoy* v. *Hedden*, 38 Fed Rep. 89; *American Net & Twine Co.* v. *Worthington*, 141 U. S. 468; *Hempstead* v. *Thomas*, 122 Fed. Rep. 538; *Hayes* v. *United States*, 150 Fed. Rep. 63, 66; *United States* v. *Merck*, 91 Fed. Rep. 639; *Franklin Sugar Refining Co.* v. *United States*, 142 Fed. Rep. 376, 382; *Powers* v. *Barney*, 5 Blatchf. 202; *S. C.*, 19 Fed. Cas. 1234; *United States* v. *Davis*, 54 Fed. Rep. 147; *United States* v. *Michelin Tire Co.*, 1 Customs App. 518; *United States* v. *Hatters' Fur Exchange*, 1 Customs App. 198; *United States* v. *Matagrin*, 1 Customs App. 309, 312; *Woolworth* v. *United States*, 1 Customs App. 120.

MR. JUSTICE HUGHES delivered the opinion of the court.

Bernard Citroen, on June 11, 1906, imported into the United States thirty-seven drilled pearls—unset and unstrung—divided into five lots, separately inclosed. The collector classified them by similitude "as pearls set or strung, or jewelry," dutiable at sixty per cent. ad valorem under par. 434 of the tariff act of 1897. 30 Stat. 151, p. 192. The Board of General Appraisers sustained the importer's protest, holding the pearls to be dutiable by similitude at ten per cent. under par. 436. The Circuit Court, on additional testimony, reversed this ruling and affirmed that of the collector, and this decision was, in turn, reversed by the Circuit Court of Appeals, which held that the board was right. 92 C. C. A. 365; 166 Fed. Rep. 693. The case comes here on certiorari.

The paragraphs of the act of 1897 (30 Stat., p. 192), which are in question, read as follows:

"434. Articles commonly known as jewelry, and parts thereof, finished or unfinished, not specially provided for in this Act, including precious stones set, pearls set or strung, and cameos in frames, sixty per centum ad valorem.

"436. Pearls in their natural state, not strung or set, ten per centum ad valorem."

The pearls had been purchased by the importer's brother and had been offered for sale, collectively and in lots, in Paris, London and Berlin, and to show that the collection was a desirable one for a necklace they had been strung from time to time on a silk cord. It appeared that Mrs. Leeds, the present owner, had seen the pearls in Paris, both loose and on a string. As she testified they were brought to her hotel "both on the string and off the string; it was strung up at odd times, then it was taken apart and other pearls were put in and others taken out, so it

was strung several times." She was permitted to wear the pearls as a necklace; and finally bought them, it being agreed that they should be delivered to her in this country. They were so delivered in the condition in which they were imported, without string or clasp, and to these the purchaser subsequently added six pearls and formed the necklace she desired.

With respect to the character of the imported collection the Board of General Appraisers found: "Pearls of greater dimensions than the average are comparatively rare; hence it frequently requires several years' search in order to secure a sufficient number to form a necklace, all accurately matched in the essential features of size, color and luster. Such a collection thus assembled would, no doubt, command a higher price than the aggregate value of the separate pearls. On the other hand, a sufficient number of pearls, although of large size, required to form a necklace, matched as to size, but not otherwise, except a mere regard for comparative color, could be assembled within a short time and at a price based upon the cost of each separate pearl. In order to dispose of thirty or more pearls to one purchaser, such a collection would usually be sold at a less price than the aggregate would amount to were each pearl sold separately. The evidence shows and we find that the pearls in question belong to the latter and not to the first class." T. D. 28,246; G. A. 6617. And as to these facts there is nothing in the evidence introduced in the Circuit Court which requires a different conclusion.

The questions presented are (1) whether the pearls fall directly within the description of the paragraph (434) relating to jewelry, and (2), if not, whether they are brought within this paragraph, through similitude, by virtue of § 7. 30 Stat. 205.

First. The rule is well established that "in order to produce uniformity in the imposition of duties, the duti-

able classification of articles imported must be ascertained by an examination of the imported article itself, in the condition in which it is imported." *Worthington* v. *Robbins*, 139 U. S. 337, 341; *Dwight* v. *Merritt*, 140 U. S. 213, 219; *United States* v. *Schoverling*, 146 U. S. 76, 82; *United States* v. *Irwin*, C. C. A., 2d Cir. 78 Fed. Rep. 799, 802. This, of course, does not mean that a prescribed rate of duty can be escaped by resort to disguise or artifice. When it is found that the article imported is in fact the article described in a particular paragraph of the tariff act, an effort to make it appear otherwise is simply a fraud on the revenue and cannot be permitted to succeed. *Falk* v. *Robertson*, 137 U. S. 225, 232. But when the article imported is not the article described as dutiable at a specified rate, it does not become dutiable under the description because it has been manufactured or prepared for the express purpose of being imported at a lower rate. *Merritt* v. *Welsh*, 104 U. S. 694, 704; *Seeberger* v. *Farwell*, 139 U. S. 608, 611. "So long as no deception is practiced, so long as the goods are truly invoiced and freely and honestly exposed to the officers of customs for their examination, no fraud is committed, no penalty is incurred." *Merritt* v. *Welsh, supra*. The inquiry must be—Does the article, as imported, fall within the description sought to be applied?

In the paragraph as to jewelry (434) Congress expressly defined what pearls were to be included. The paragraph reads, "including . . . pearls set or strung." It does not say pearls that can be strung, or that are assorted or matched so as to be suitable for a necklace, but pearls "set or strung." We are not concerned with the reason for the distinction; it is enough that Congress made it. Had these pearls never been strung before importation, no one would be heard to argue that they fell directly within the description of paragraph 434 because they could be strung, or had been collected for the purpose of string-

ing or of being worn as a necklace. Loose pearls—however valuable the collection—however carefully matched or desirable for a necklace—are not "pearls set or strung."

Nor can it be said that pearls, imported unstrung, are brought within the description of paragraph 434 because, at some time, or from time to time, previous to importation, they have been put on a string temporarily for purposes of display. The paragraph does not use a generic definition which could be deemed to define pearls previously strung though imported unstrung, but refers—in terms which shelter no ambiguity—to their condition when imported. It is not a case of parts of a described article, separately packed to avoid the specified duty on the article as a whole. *United States* v. *Schoverling, supra; Isaacs* v. *Jonas*, 148 U. S. 648; *United States* v. *Irwin, supra.* For here, the imported pearls, whether regarded separately or taken as a collection, are not within the description. It is idle to comment on the relative value of a string to hold the pearls, for this is immaterial. The statute has furnished the test and we are not at liberty to make another.

Second. Although the pearls do not fall directly within paragraph 434, the question remains whether they are brought within it by similitude. The similitude clause (§ 7) applies to articles not enumerated in the tariff act, and hence it governs the rate in this case only if it be found that the pearls are excluded from the description of paragraph 436, which enumerates "pearls in their natural state, not strung or set." May it fairly be said that in these two classes of pearls—those "set or strung" and those "in their natural state, not strung or set"—Congress intended to describe all pearls, or is there a sort of pearls, for example, those drilled and matched so as to be suitable for a necklace, which must be said to have been left unenumerated?

In the customs act of 1816 (3 Stat. 310) a duty of seven

and a half per cent. ad valorem was laid on "precious stones and pearls of all kinds, set or not set." The act of 1842 (5 Stat. 548, 555) made the duty seven per cent. "on gems, pearls, or precious stones." That of 1846 (9 Stat. 42, 45, 48) fixed the rate at thirty per cent. for "diamonds, gems, pearls, rubies, and other precious stones, and imitations of precious stones, when set in gold, silver, or other metal," and at ten per cent. on "diamonds, gems, pearls, rubies, and other precious stones, and imitations thereof, when not set." In 1857 (11 Stat. 192) and in 1861 (12 Stat. 178, 190), the same distinction was maintained.

In the Revised Statutes (§ 2504, p. 484) we find the following: "Precious stones and jewelry.—Diamonds, cameos, mosaics, gems, pearls, rubies, and other precious stones, when not set: ten per centum ad valorem; when set in gold, silver, or other metal, or on imitations thereof, and all other jewelry: twenty-five per centum ad valorem." In 1883 (22 Stat. 488, 513, 514) the rate of duty was made twenty-five per cent for "jewelry of all kinds" and ten per cent. for "precious stones of all kinds." In 1890 (26 Stat. 600, 601) the jewelry paragraph (452), which fixed the rate at fifty per cent. embraced all articles, not elsewhere specially provided for, which were composed of precious metals or imitations thereof (including those set with pearls) and known commercially as jewelry; and the following paragraph (453) read: "Pearls, ten per centum ad valorem." By the act of 1894 (28 Stat. 509, 534) the jewelry rate was reduced to thirty-five per cent.; the paragraph as to pearls was changed so that instead of describing pearls generally it read: "Pearls, including pearls strung but not set, ten per centum ad valorem," and pearls set were placed with precious stones set, with a duty of thirty per cent.

It will thus be observed that when pearls were enumerated in the tariff acts prior to that of 1897, the enumeration

was evidently intended to be comprehensive and covered all pearls not included in the provision for jewelry. The act of 1897 placed "pearls set or strung" in the jewelry paragraph, and then provided the rate of ten per cent. for "pearls in their natural state, not strung or set."

To complete the review of the statutes, it may be added that in 1909, when new tariff legislation was under consideration, it was proposed, in the light of the decisions to which we shall presently refer, that there should be inserted in the act a clause providing that "collections of pearls selected, matched, or graded shall be dutiable as jewelry;" and the House bill so provided. H. R. Bill No. 1438, par. 447, 61st Cong., 1st sess., Cong. Rec., Vol. 44, p. 1510. Congress not only refused to make this insertion, but instead, retaining the existing rate on unstrung and unset pearls, omitted the phrase "in their natural state," and further clarified the provision by inserting the words "drilled or undrilled," so that the clause in the act of 1909 reads: "Pearls and parts thereof, drilled or undrilled, but not set or strung, ten per centum ad valorem." (36 Stat. 68.)

The difficulties that beset the construction of paragraph 436 of the act of 1897 sufficiently appear in the cases which have been brought before the courts. In 1898, Tiffany & Company imported pierced pearls described in the invoices as "pearls drilled, but not strung." They were assessed for duty at twenty per cent. as unenumerated articles, manufactured in whole or part, under § 6. The Circuit Court (103 Fed. Rep. 619) held that the phrase "pearls in their natural state" was a new phrase wholly unknown to merchants; that the words, having no commercial meaning, must be interpreted in their plain, natural sense; and that a drilled pearl was not a pearl in the natural state. It was pointed out that the selection made by Congress in the use of these words, so interpreted, seemed an unfortunate one as the effect was to

attach a higher duty to the lower article. The conclusion was that Congress had not, as presumably it intended to do, covered all kinds of pearls in the various jewelry paragraphs, but had "left a kind of pearl to be covered by one of the catch-all paragraphs," and this the court could not correct. The assessment was sustained.

On a later importation of drilled pearls this decision was followed by the collector, and the ruling was affirmed by the Circuit Court. T. D. 22,140, G. A. 4692; *Tiffany* v. *United States* (1901), 105 Fed. Rep. 766. But, while overruling the importer's protest, the court stated that the similitude clause should operate before the general clause providing for unenumerated manufactured articles and that the imported pearls bore a closer resemblance to strung pearls than to pearls in their natural state. This was in effect to hold that drilled pearls were dutiable under the jewelry paragraph at sixty per cent.

This decision was reversed by the Circuit Court of Appeals. *Tiffany* v. *United States* (1901), 50 C. C. A. (2d Cir.) 419; 112 Fed. Rep. 672. It was ruled that the pearls were not covered by either of the paragraphs 434 and 436; that the similitude clause should be applied; and that the drilled pearls more closely resembled pearls in their natural state than strung pearls and hence that the pearls in question were dutiable at ten per cent. (This was followed in T. D. 23,751, G. A. 5149.) The court, however, indicated that there would be an exception to this rule when the pearls had been so selected as to produce a collection "worth more than the aggregate values of the individual pearls composing it."

Meanwhile, Neresheimer & Company had imported two lots of drilled pearls, in March and November, 1901, respectively, one being forty-five and the other thirty-nine in number, the total value exceeding $123,000. At first they were assessed at the rate of twenty per cent.; but after the decision of the Court of Appeals in the *Tiffany*

Case, supra, both entries were reliquidated and the articles were assessed by the collector as "pearls strung" at sixty per cent. This was sustained by the Board of General Appraisers (1902), T. D. 23,748, G. A. 5146. The board found that the pearls "were imported in a morocco case, with silk lining, forming a groove running lengthwise, in which the pearls were placed and by which they were held; that they were all matched and assorted as to quality, size, color, and shape, and arranged in a graduated order, the center being the largest, and gradually decreasing in size to the last pearl at each end; that the pearls were invoiced as 'drilled pearls,' and are drilled, and when the boxes were opened gave the appearance of necklaces; that they each constituted extraordinary collections of such and were of the finest ever imported into this country; that by reason of this matching and assortment they in each case possessed a value greatly in excess of the aggregate values of the individual pearls composing the collection."

The Circuit Court affirmed the action of the board. *Neresheimer & Co.* v. *United States* (1903), 131 Fed. Rep. 977. But on appeal the decision was reversed by the Circuit Court of Appeals (1904), 68 C. C. A. (2d Cir.) 654; 136 Fed. Rep. 86. Reviewing the conflicting testimony, the Court of Appeals concluded that the evidence did not warrant a finding that the pearls had been assorted so as to acquire the increased value as a collection which would bring them within the exception suggested in the *Tiffany Case.* It was held that they were dutiable at ten per cent. "by similitude to paragraph 436."

In 1905, Charles E. Rushmore imported eighty-five pearls which the appraiser, in a special report, stated had "been carefully selected, matched, and assorted, and, in fact, are said to have been strung, and require only to be restrung to form a necklace. They are in the same condition as those passed upon by the board in G. A.

5146 (T. D. 23,748)." The Board of General Appraisers, upon this report, reversed the ruling of the collector and decided that the duty was ten per cent., on the authority of the *Neresheimer Case, supra.* No appeal was taken by the Government from this decision; it was rendered on January 21, 1905, and was circulated by the Treasury Department for the information and guidance of officers of customs and others concerned.

It thus appears that prior to 1906, when Citroen imported the pearls now in question, unstrung pearls, though drilled and matched so that they were ready to be strung as a necklace, had been held dutiable at ten per cent. The fact that they were reported to have been previously strung abroad had not been deemed of consequence in the *Rushmore Case*, and the Government had acquiesced in the ruling. Further, the exception indicated by the court in the *Tiffany* and *Neresheimer Cases* was negatived by the Board of General Appraisers, which in Citroen's case found that the pearls were not matched as to color and luster with such care as would enhance their value as a collection. T. D. 28,246, G. A. 6617. And the Circuit Court of Appeals, reversing the Circuit Court, held that there was no reason to disturb these findings. "It is fair to assume," said the Court of Appeals (p. 695), that the ruling in the *Rushmore Case* "actuated the appellant (Citroen) in importing and selling the pearls." And it is now asserted by his counsel at this bar that should the Government succeed, Citroen would be the only person who would have paid sixty per cent. duty on a collection of pearls of the sort which these have been found to be.

Later—in 1909—while the act of 1897 was still in force, Tiffany & Company imported fifty-nine pearls divided into four packages, all loose and all drilled. It appeared from the testimony before the Board of General Appraisers that M. Guggenheim, the ultimate purchaser,

visited the Paris establishment of Tiffany & Company, for the purpose of purchasing a necklace for his wife and finding nothing suitable in stock he requested the salesman to get a number of pearls together to make the desired necklace. The assortment was finally completed, a sketch being made of the necklace as it would appear when finished; and an order was given for the necklace to be made by Tiffany & Company at New York from the pearls selected. While it was not shown that the pearls had been worn abroad, it was found that they may have been, "and probably were temporarily strung in the Paris establishment one or more times to show how the string of pearls would appear as a necklace." On the authority of the decision of the Circuit Court of Appeals in Citroen's case, the Board of General Appraisers sustained the importer's protest, holding that the pearls were dutiable either directly or by similitude at ten per cent. under paragraph 436. T. D. 29,542, G. A. 6864. This was sustained by the Circuit Court (*United States* v. *Tiffany & Company*, 172 Fed. Rep. 300), and its decision was affirmed by the Circuit Court of Appeals, 101 C. C. A. (2d Cir.) 665; 178 Fed. Rep. 1006. Petition for writ of certiorari was denied by this court. 218 U. S. 675.

In its opinion in the present case, the court below (166 Fed. Rep. 696) forcibly expressed its dissatisfaction with the effort to resolve the doubt as to the meaning of the statute by a comparison "depending not upon an examination of the articles themselves, but often upon extrinsic evidence obtained long afterwards." It was a comparison, said the court, "which cannot be uniform, which imposes 10 per cent. upon one aggregation of pearls and sixty per cent. upon a similar aggregation, the rate depending upon the ability to obtain evidence of prior use in foreign countries. A comparison which does not admit of a fixed, definite rule, which encourages partiality, promotes injustice, and has broken down in practical

application. This is illustrated by the fact that in the cases which have come to the attention of the court the most marked contrariety of opinion has developed as to whether the respective collection was matched for a necklace, and whether a larger price could be obtained for the pearls singly or in combination." The Court of Appeals also stated that it would incline to the opinion, were the question an open one in that court, "that drilled pearls are not excluded from paragraph 436."

In this view we think the court was right. As was pointed out by the Board of General Appraisers: "Pearls just as they come from the shell are, strictly speaking, only such as are in their natural state." But the statute deals with the pearls of commerce. It appears that over seventy-five per cent. of all large pearls when they first come into the hands of wholesale dealers are drilled, usually in a somewhat primitive manner by the pearl fishers. It cannot be supposed that Congress contemplated such a disregard of the facts of trade, and such a radical departure from the policy of former tariff legislation, as would be involved in a construction of paragraph 436 which would exclude drilled pearls. Moreover, the language of the paragraph is "pearls in their natural state, not strung or set." This implies that the description includes pearls that can be strung or set, and pearls cannot be strung unless perforated. The words do not exclude, but embrace pearls that have been pierced, provided they are unstrung and unset.

But if drilled pearls, when neither strung nor set, are included in paragraph 436, the fact that they have been matched or assorted so as to form a collection suitable for stringing, or of being worn strung, does not take them out of the paragraph. Its language makes no distinction of that sort. The selection, or matching, does not alter the character of the pearls.

We are of the opinion that, as in former tariff acts to

which reference has been made, Congress intended to cover and did cover all pearls in the two paragraphs and did not leave a class of pearls unenumerated. The words in paragraph 436 are to be taken as describing a condition in antithesis to that described in paragraph 434, under which, if strung or set, imported pearls are dutiable as jewelry. Such an interpretation provides a simple and workable test, permitting certainty and impartiality in administration which should preëminently characterize the operation of tariff laws, and fulfills, as we believe, the purpose of Congress.

We conclude that the similitude clause has no application and that upon the facts shown the pearls imported in this case were dutiable under paragraph 436 at ten per cent.

Judgment affirmed.